रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 39] नई दिल्ली, सितम्बर 25— अक्टूबर 1, 2022, शनिवार/ आश्विन 3— आश्विन 9, 1944
No. 39] NEW DELHI, SEPTEMBER 25—OCTOBER 1, 2022, SATURDAY/ASVINA 3– ASVINA 9, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मत्रांलय
(राजस्व विभाग)

(केन्द्रीय अप्रत्यक्ष कर एवं सीमा शुल्क बोर्ड)

नई दिल्ली, 23 सितम्बर, 2022

का.आ. 879.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में राजस्व विभाग के अधीन, निम्नलिखित कार्यालय जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:

क्रम सं.	कार्यालय का नाम	कार्यालय का पता
1	आयुक्त का कार्यालय, केंद्रीय वस्तु एवं सेवाकर	जीएसटी भवन, सिद्धि सदन बिल्डिंग, नारायण उपाध्याय मार्ग, भावनगर-364001
2	कार्यालय आयुक्त, केंदीय वस्तु एवं सेवाकर अपील- जयपुर	मुख्यालय- नव केन्द्रीय राजस्व भवन, स्टैच्यू सर्किल, सी-स्कीम, जयपुर

[फा. सं. ई-11017/3/2017- हिन्दी-2 डीओआर]

नीहारिका सिंह, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

New Delhi, the 23rd September, 2022

S.O. 879.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government, hereby notifies, the following offices under Department of revenue where more than 80% staff have acquired the working knowledge of Hindi:

S.No.	office name	office address
1	Office of the Commissioner Central Goods and Services Tax	GST Bhavan, Siddhi Sadan Building, Narayan Upadhyay Marg, Bhavnagar-364001
2	Office of the Commissioner Central Goods and Services Tax Appeals- Jaipur	Hqrs : New Central Revenue Building, Statue Circle, C-scheme, Jaipur

[F. No. E-11017/3/2017-Hindi-II DOR]

NIHARIKA SINGH, Director (OL)

आयुष मंत्रालय

नई दिल्ली, 12 अगस्त, 2022

का.आ. 880.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के नियम (10) के उप-नियम (4) के अनुकरण में, आयुष मंत्रालय के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करती है:

1. **औषधि मानकीकरण अनुसंधान एकक, जनकपुरी, नई दिल्ली**
2. **चिकित्सा अनुसंधान एकक (यूनानी), मेरठ, उत्तर प्रदेश**
3. **क्षेत्रीय यूनानी चिकित्सा अनुसंधान संस्थान, अलीगढ़, उत्तर प्रदेश**
4. **क्षेत्रीय यूनानी चिकित्सा अनुसंधान संस्थान, पटना, बिहार**

[फा. सं. ई. 11011/3/2019-आयुष (रा.भा.)]

रोहतास भनखड़, निदेशक

MINISTRY OF AYUSH

New Delhi, the 12th August, 2022

S.O. 880.— In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following offices under the administrative control of the Ministry of Ayush, wherein more than 80% officers/employees have acquired the working knowledge of Hindi:

1. **Drug Standardization Research Unit, Janakpuri, New Delhi.**
2. **Clinical Research Unit (Unani), Meerut, Uttar Pradesh.**
3. **Regional Research Institute of Unani Medicine, Aligarh, Uttar Pradesh.**
4. **Regional Research Institute of Unani Medicine, Patna, Bihar.**

[F. No. E.11011/3/2019-AYUSH (O.L.)]

ROHTAS BHANKHAR, Director

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 29 जुलाई, 2022

का.आ. 881.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, (ओ एंड एम), एनटीपीसी, सीपत, बिलासपुर (छ.ग.); अतिरिक्त प्रबंधक और मानव संसाधन (प्रमुख), मैसर्स एरा इंफ्रा इंजीनियरिंग लिमिटेड, नोएडा (यूपी); परियोजना प्रबंधक, एरा इंफ्रा इंजीनियरिंग लिमिटेड बिलासपुर (छ.ग.)के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, छत्तीसगढ़ कर्मचारी मजदूर एकता यूनियन, बिलासपुर (छ.ग.), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/119/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27/07/2022 को प्राप्त हुआ था।

[सं. एल- 42011/64/2017-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR & EMPLOYMENT

New Delhi, the 29th July, 2022

S.O. 881.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/119/2017) of the Central Government Industrial Tribunal cum Labour–Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager(O&M), NTPC, Seepat, Bilaspur (Chhattisgarh);The Additional Manager &HR (Head), M/s Era Infra Engineering Ltd., Noida (U.P.); The Project Manager, Era Infra Engineering Ltd. Bilaspur (Chhattisgarh) and the President, Chhattisgarh karamachari Mazdoor Ekta Union, Bilaspur (Chhattisgarh), which was received along with soft copy of the award by the Central Government on 27/07/2022.

[No. L- 42011/64/2017- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/119/2017

Present: P.K.Srivastava H.J.S..(Retd)

Shri Omprakash GangotriPresident, Chhattisgarh Karmachari
Mazdoor Ekta Union,Bilaspur
Bilaspur(Chhattisgarh)-495001 ...Workman

Versus

The General Manager(O&M)
NTPC, Seepat
PO-Ujjwal Nagar,
Bilaspur(Chhattisgarh)-495001.

2.Additional Manager & HR(Head)
M/s Era Infra Engineering Ltd.C-56/41
Sector-62,Noida(U.P.)-201301

3.The Project Manager
Era Infra Engineering Ltd.
NTPC, Seepat Site,
PO-Ujjwal Nagar,
Bilaspur(Chhattisgarh)-495001 .... Management

AWARD

(Passed on 20-7-2022.)

As per letter dated 9/8/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42011/64/2017-IR(DU). The dispute under reference relates to:

"Whether the action on the part or M/s Era Infra Engineering Ltd. A contractor working under the principal employer at NTPC, Seepat site in terminating the workman namely Bisun Lal S/o Shri Ganpati and not paying the terminal benefits as espoused by the President of Chhattisgarh Karmachari Mazdoor Ekta Union, Bilaspur is legal and justified. If not, what relief the above names workman is entitled to? ."

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The workman side appeared through its learned counsel on 10-7-2019. The management learned counsel also appeared on the same date. The learned counsel for Management Party No.2 i.e. M/s Era Infra Engineering Ltd. Filed its compliance on 25-10-2019. The workman side did not file any statement of claim. They were given last chance for filing statement of claim vide order dated 25-10-2019 even then the workman side did not care to file statement of claim till date. Today none was present from the side of the workman.

3. Since no statement of claim was preferred from the side of the workman, the Management No.1 and No.2 also preferred not to file any written statement of defence.

4. The initial burden to prove his case lies on the workman in which the workman has miserably failed. Hence holding the claim of the workman not proved the reference deserves to be answered against the workman and is answered accordingly.

5. On the basis of the above discussion, following award is passed:-

A. The action of the management as mentioned in the reference is held to be just and proper.

B. The workman is held entitled to no relief.

6. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 20-7-2022

नई दिल्ली, 22 सितम्बर, 2022

का.आ. 882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 28/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2022 को प्राप्त हुआ था।

[सं. एल- 22011/3/2020.आई. आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 22nd September, 2022

S.O. 882.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2020) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the Management of Food Corporation of India and their workmen, received by the Central Government on *21/09/2022*

[No. L-22011/3/2020 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICERN CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT KANPUR

Present: Soma Shekhar Jena Hjs (Retd.)

I.D. No. 28 of 2020

L-22011/3/2020-IR(CM-II) dated 31.07.2020

BETWEEN :

Shri Kunwar Chand S/o Late Maikulal,
Shri Manish Pal, Advocate, 82/23-C,
Gurugovind Singh Marg, Lucknow-226004

AND

1. The Area Manager,
Food Corporation of India,
District office, 7-R, Dalibagh,
Lucknow-226010

2. The General Manager (U.P),
Food Corporation of India,
Regional Office, TC/3V, Vibhuti Khand,
Gomti Nagar, Lucknow-226010

3. The Executive Director,
Food Corporation of India,
Zonal Office (North) , A-2A, 2B, Sector-24,
Gautam Budh Nagar, NOIDA (U.P)-221301

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-22011/3/2020-IR(CM-II) dated 31.07.2020

SCHEDULE

1. ***"Whether the claim arises due to denial of weekly off payment to the casual labour Shri Kunwar Chand by the management of FCI, Lucknow in mid of the employment i.e w.e.f January, 2014 is justified in the eye of law or not?"***

2. ***If yes, what relief the concerned workman is entitled to?***

On receipt of notification, notices were issued to both the parties on 21st June 2021 fixing 27.08.2021 for filing of claim statement. But none appeared on behalf of interested parties. After that several dates were fixed for filing the claim statement but none appeared before the Tribunal. On 09.03.2022 Authorized representative of the management side appeared and filed the authority letter but none appeared on behalf of claimant workman side. The case was fixed on 22.04.2022, 10.5.2022 and 8.07.2022. Despite giving ample opportunities to the claimant workman for submitting his averments; claimant workman failed to present his case before the Tribunal . On 08.07.2022 case was reserved for award. From the aforesaid circumstances it is presumable that the workman is not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

Date: 08.07.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2022

का. आ. 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्लू.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 80/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2022 को प्राप्त हुआ था।

[सं. एल -22012/121/2016-आई. आर. (सी एम.2)]

राजेन्द्र सिंह , अवर सचिव

New Delhi, the 22nd September, 2022

S.O. 883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2017) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of W.C.L. and their workmen, received by the Central Government on 21/092022.

[No. L-22012/121/2016 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/80/2017

Present: P.K.Srivastava H.J.S..(Retd)

Mohd. Naseem Siddiqui,
Zonal Mahamantri,
Koyla Mines Engineering Works Association
Ward No.10, Gudhi Palachourai,
District Chhindwarha(M.P.) ...Workman

Versus

The Chief General Manager,
Western Coal Fields Limited
Kanhan Area,Post Dungaria
Tehsil Junnardev,
District Chhindwarha (M.P.) ... Management

AWARD

(Passed on 23-8-2022)

As per letter dated 5/6/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/121/2016-IR(CM-II). The dispute under reference relates to:

"Kya Mukhya Mashaprabhandak Western Coal Fields Limited, Kanhan Shetra, Post Dungaria, Tehsil Junnardev, District Chhindwarha(M.P.) NCWA-11 ke pravdhan 10.4.4 vs NCWA-111 ke Pravdhan 9.4.4. ke anusar denank 30-6-2013 ko sewanevrat hue purv kamgar Shri Mahesh ke ashrit putra Shri Arun Kumar ko rozgar na dena nyaysangat hai?Yadi Nahi to purv Kamgar kya anutosh paane ka adhikari hai? ."

1. After registering the case on the basis of reference, notices were sent to the parties. The workman did not appear inspite of service of notice and no statement of claim has been filed from his side to represent his case.

2. The case of the Management in their statement of defence is that the service condition of Coal Mines are governed by NCWA-2 being executed from time to time . NCWA-2 came inforce from 1-1-1979 to 31-12-1982 and NCWA-3 was inforce from 1-1-1983 to 31-12-1986. According to the Management when the workman retired in the year 2011 NCWA-IX was inforce from 1-7-2006 to 3-7-2011. It is not disputed by Management that the workman retired after completing 35 years of satisfactory service. According to the Management the provision of appointment of compassionate appointment to dependent son of a retired employee was done away in NCWA-4 and since then it is not inforce. The case of Management is further that since on the date of retirement of the workman NCWA-IX was inforce which do not provide for such an appointment, hence the claim of the workman in this respect is rightfully rejected. Accordingly the Management has prayed that the reference be answered against the workman.

3. The Management filed photocopy of NCWA-1 to NCWA-IX, letter issued by Management regarding superannuation of workman.

4. The Management examined its witness.

5. At the stage of argument no one appeared from the side of the workman, hence arguments of learned counsel for Management Shri A.K.Shashi were heard. I have also perused the record.

6. On perusal of record, in the light of submissions made out , following issues arise for determination:-

1. The claim of workman for appointment of his dependent son on his superannuation would be governed by which of NCWA?

1. It is not disputed that the workman superannuated on 30-6-2013. It is also not disputed that NCWA-1 was inforce when the appointment of the workman was done and at the time of his retirement NCWA-IX was inforce which came inforce since 1-7-2006 to 30-7-2011. This NCWA-IX does not provide for such an appointment. It only provides for compassionate appointment on death or permanent dis-ability, hence the said relief of appointment to the dependent son of the workman in the case in hand cannot be held unjustified in law and fact and accordingly the workman is held entitled to no relief/claim.

2. On the basis of the above discussion, following award is passed:-

A. The action of the management in refusing the claim of workman for appointment of his dependent son on his superannuation is held unjustified in law and fact.

B. **The workman is held entitled to no relief.**

3. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 23-8-2022 P.K. SRIVASTAVA Presiding Officer

नई दिल्ली, 22 सितम्बर, 2022

का.आ. 884—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 53/2020) प्रकाशित करती है

[सं. एल-12011/45/2020-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 22nd September, 2022

S.O. 884.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2020) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur* shown in the Annexure, in the industrial dispute between the management of Syndicate *Bank (Now Canara Bank)* and their workmen.

[No. L-12011/45/2020 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT KANPUR

Present : Soma Shekhar Jena Hjs (retd.)

I.D. No. 53 of 2020

L-12011/45/2020-IR(B-II) dated 16.12.2020

BETWEEN

The Prabal Pratap Singh,
EXecutive Committee member,
U.P. Bank Workers Organization,
2-Naveen Market,
Kanpur (U.P)-208001

AND

The General Manager (P),
Syndicate Bank (now Canara Bank)
(Corporate Office, Gandhi Nagar,
Bangalore-560009

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-12011/45/2020-IR(B-II) dated 16.12.2020. Later a corrigendum was received in this Tribunal with notification no. L-12011/45/2020-IR(B-II) dated 12.12.2020 where schedule is read as follows:-

SCHEDULE

1. ***"Whether the action of the management of Syndicate Bank (now Canara Bank) in not regularizing the services of Shri Ravindra & 7 others as per details mentioned in the Annexure-A who were engaged as Class IV staff on temporary basis since years together is just, fair & legal? If not, to what relief these workmen are entitled to?"***

On receipt of notification, notices were issued to both the parties on 28th June 2021 fixing 02.09.2021 for filing of claim statement. But none appeared on behalf of claimant workmen on the date fixed. Authorized Representative appeared on behalf of the management and filed an authority letter on 14.12.2021 but none appeared

on behalf of the claimants workmen.

On perusal of the record it is found that though several dates were fixed for filing the claim statement none appeared on behalf of the claimant workmen before the Tribunal. Despite giving ample opportunities to the claimant union for submitting statement of claim; the union failed to present the case before the Tribunal. On 14.09.2022 the case was reserved for final award for non-appearance of the workers' union. From the aforesaid circumstances it is presumable that the claimants' workmen and the union are not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

Date: 16.09.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2022

का.आ. 885.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफॅ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 88/2018) को प्रकाशित करती है

[सं. एल -12011/42/2018-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 22nd September, 2022

S.O. 885.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen.

[No. L-12011/42/2018 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT KANPUR

Present Soma Shekhar Jena Hjs (Retd.)

I.D. No. 88 of 2018

L-12011/42/2018-IR(B-II) dated 28/08/2018

BETWEEN

The General Secretary,
Bank of India Staff Union U.P,
86/415, Deo Nagar,
Kanpur (U.P)-208003

AND

1. The Zonal Manager ,
Bank of India, Zonal Office, Canal Road,
Kanpur (U.P.) -208001

2. The Senior Manager,
Bank of India,
Branch Office, Kaushalpuri
Kanpur (U.P.)-208012

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-12011/42/2018-IR(B-II) dated 28.08.2018

SCHEDULE

1. ***"Whether the duties of Head Cashier allotted by the management of Bank of India to Shri Ashish Mishra designated Head Cashier at Kaushalpuri Branch, Kanpur vide email dated 10.10.2017are in accordance with the duties mentioned in Bipartite Settlement ? And whether the action of management was just, fair and legal in allotting the said duties to Shi Ashish Mishra designated Head Cashier vide email dated 10.10.2017, if not what relief the concerned workman is entitled to?'***

The averments of the claimant workman can be concisely stated as follows:-

Shri Ashish Mishra is an activist of the Trade Union Movement espousing the causes of fellow employees and paying a Vangardist role for the furtherance of Trade Union Movement in Banking Industry in general and in Bank of India in particular. It is because of his popularity amongst Bank Employees that he is an elected General Secretary of Bank of India Staff Union, Uttar Pradesh which is a majority Union. He is also General Secretary of We Bankers Association Uttar Pradesh.

Sri Ashish Mishra has raised his strong voice against misdeeds of some of the Executives of the Bank and as a result he has to bear the brunt of the ire of such executives.

Service conditions of bank employees are governed by Sastry Award, Desai Award as modified by subsequent Bipartite Settlements entered into between Indian Banks Association representing its member banks and all the major Unions of Bank Employees representing workmen of banks Association, the mandatory provisions of Bipartite Settlement have legal force and binding on management of Bank of India.

In utter violation of the above mandatory provisions of Bipartite Settlement, the Senior Manager BO: Kaushalpuri , opposite party no. 2, issued an Office Order on 03.03.2017 wherein duties over and above the duties listed under the Bipartite Settlement were entrusted upon workman Sri Ashish Mishra.

Since office order dated 03.03.2017 and duties entrusted vide said office order were in utter violation of the mandatory provisions of Bipartite Settlement dated 27.04.2010 which were entrusted upon workman Sri Ashish Mishra on extraneous considerations and malafide and with bad motive of harassing him through exercise of unfair labour practice as defined under Section 2ra of the Industrial Disputes Act, 1947 read with Fifth Schedule, the Union served a notice for agitation on the management and the Assistant Labour Commissioner (Central), Kanpur interfered to seize the matter into immediate conciliation proceedings.

Vide email dated 10.10.2017, the management has entrusted following duties upon workman Sri Ashish Mishra, the designated Head Cashier at Kaushalpuri Branch, Kanpur:

I. Opinion Compilation

II. Verification of Vernacular Signatures/endorsements

III. Countersigning Cheques and /or Drafts (on selves or correspondents),

Payment Orders, Deposit Receipt etc.

IV. Attending to Government Treasury Work

V. Discharging/Endorsing Bills, Cheques etc. being Incharge of Clearing

VI. Passing independently Clearing and Transfer Cheques, vouchers etc

(whether credits or debits) upto and including Rs 50,000/ and CAsh Vouchers upto Rs 50,000/jointly with an authorized person.

VII. All other duties specified for Singly Window Operator "A" in 9th Bipartite Settlement, Cash Payments and Receipts, Cash Sorting, Teller Payments upto Rs 20,000/ ensuring highest level of Customer satisfaction & Complaint Free Services, Management of Cash/Sorting for ATM, Cash Remittance/Indent. Issue of System Generated Receipt, etc.

VIII. Make Efforts to add new customers and sale of third party products during leisure time. Efforts should be made for achieving business generation. Publicity of APY, PMSJY, PMSBY

IX. Preparation/sorting of Cash for lodgment and making efforts for timely lodgment of Cash to Currency Chest.

X. Any other work Allotted from time to time.

The averments of the O.P management side may be summarized as follows:-

Shri Ashish Mishra was allotted duties in terms of the Bipartite Settlement as also the Bank level settlement signed between the Management of the answering Bank and the federation of Bank of India staff Unions on

24.03.2011. There was no violation of any kind.

Moreover, the Bank level settlement dated 24.03.2011 was applicable in all the branches of Bank of India throughout the country and are binding upon the parties.

The terms of the said settlement are applicable to Mr. Ashish Mishra hence the contention of the Union is devoid of merits and is misconceived.

It is further submitted that no violation was caused in the allotment of the duties of Head Cashier to Mr. Ashish Mishra, therefore, the question of unfair labour practice as defined under section 2(ra) of I.D. Act 1947 read with Vth schedule does not not arise. it is also submitted that workman Shri Ashish Mishra has accepted in his appointment letter to abide by above provisions. Thus the union has not approached this Tribunal with clean hands.

It is submitted that allotment of duties to Shri Ashish Mishra by the Bank on 10.10.2017 was just, proper, and fair and was in accordance with the Bipartite Settlement and Bank level settlement dated 24.03.2011. Thus the contention of the union is baseless and misconceived.

The basic purpose of work allocation among Bank's staff including Mr. Ashish Mishra, workman are routine in nature and to make the staff concerned accountable for the allotted work. It is also a fact that each of the duty, listed in para 10 (vii and (x) of union's claim as and when asked to be performed by the staff concerned and the work man is bound by the service conditions to follow. It is submitted that Bank always keeps in mind while asking clerical staff to perform the duties of his post/cadre only and not for any other post post/cadre.

It is further stated that union has attempted to misinterpret the duties of Head Cashier category-II. Therefore, it is irrelevant and wrong to compare the duties of Head Cashier-II with a special Assistant. Thus the contention of the union is baseless, illogical and misconceived.

It is very much disputed that the union/workman knowing fully well that the duties allocated to him are as per the terms of Bipartite settlements as also the Bank level settlement dated 24.03.2011 and are applicable to the workman employees of all India Branches of Bank of India, has raised the issue before the Tribunal in utter violation of the provisions contained therein. It is also important to note that all the allotted duties do not come on all the working days for performance by the workman concerned barring exceptions. However, in practice if there is some extra work load on the counter on any day necessary help if required is also given to Head Cashier, It is also noteworthy that for any grievance relating to Bipartite settlement issues can be raised through the unions signing the settlement and to take up the issues with IBA.Similarly for Bank level settlements the issues could be represented through the federation of Bank of India Unions to be taken up with the Management of the Bank. The workman Shri Ashish Mishra instead of approaching the parties in the settlements has straight away approached this forum which is totally barred by the enabling provisions contained in those settlements.

Workman/Union in statement of claim have accepted all the duties allotted to workman by the Bank except those listed at serial no. VII and X. As regards duties listed at sl.no. VII, a reference is craved to Annexure-2 of the reply of the Bank which clearly confirms Bank's stand and dispels all the apprehensions of the workman/union. As regard Para X- No duties were listed except putting an enabling clause in the duty allocation sheet which itself speaks of the hollowness of workman's claim. For the sake of clarity it is further clarified that point no.x means that, depending upon situation/ exigencies any other work of his cadre could be assigned to him as per provisions of the Bipartite settlement dated 18.09.1984 or those as laid down in other Bipartite settlements, Bank level settlements considering the factual matrix cited above.As such it does not attract any extra/officiating allowance. Thus the workman's claim is not based on facts and valid grounds, hence he is not entitled to any extra allowance other than what has been paid to him by the Bank. The management vehemently submits that claims of the Union are baseless, fabricated and without merits and unsustainable.

The points to be answered in this proceeding are as follows:-

1. Whether allotment of duties of Head Cashier on Ashish Mishra by the management of bank of India was legally valid?
2. To what relief the concerned workman is entitled to ?

Point No.1

From reading of statement of claim, written statement filed by O.P management it is clear that the industrial dispute stated in schedule can be disposed by referring to the averments filed by the parties and by referring to documents already filed by the parties. It stands undisputed that Ashish Mishra after selection joined the bank of India as clerical staff on 18.07.2013. For sake of clarity and for proper adjudication of this Industrial dispute it appears indispensable to refer to the offer-cum appointment letter dated 04.07.2013 issued by Bank of India :-

"You will be required to perform all the duties of a Clerk that may be assigned to you from time to time.Such duties would be inclusive of payment/receipt of cash marketing/canvassing of bank's products within and outside the bank's premises working on computers learning of Hindi, in consonance with Government directive issued from time

to time. The aforesaid duties are illustrative but not exhaustive and the Bank reserves its right to entrust any other duties as deemed fit from time to time.

Of Bipartite settlement dated 18.09.1984 Annexure-I para 1 is stated in the following works:-

"In terms of 9th Bipartite Selttlement dated 28.04.2010, IBA has advised the duties of clerical staff and also those who are performing the duites of spceial pay carrying posts, which includes cash payment/receipt and passing of clearing/transfer cheques, couchers etc. independently upto a specified amount as mentioned therein. Please also refer to our Bank level Memorandum of Settlement dated 24.03.2011 between the Management and the representatives of the Federation of Bank of India Staff Unions inter alia, specifying duties of Head Cashier Category-II."

Annexure (iv) is notification issued by Bank of India, Kaushalpuri branch that clearly spells out that Ashish Mishra, Head Cashier was enjoined to discharge duty of head cashier. It stands undisputed that Ashish Mishra was selected as Head Cashier Category-II of Kaushalpuri Branch of the Bank of India. On comparative reading of the job assignments of Head Cashier II and special Assistant not much difference in work assignments and responsibility is noticed. The direction to Ashish Mishra to work as Head Cashier II does not fall in any category mentioned in unfair labour practice. From the papers stated to be inter office memorandum dated 14.07.2015 issued by zonal manager, Kanpur zone to the branch manager Bharawan branch it is crystal clear that Ashish Mishra was selected for posting as head cashier category-2 at Kaushal puri branch subject to his accepting his assignment duties of Head cashier-2 have been mentioned in paper furnished by the bank. This paper furnished by the bank containing duty chart of Head Cashier-2 has remains unchallenged and unshattered. On 10.07.2020 by way of written communication Ashish Mishra submitted his disinclination to work as Head Cashier II of Kaushalpuri Branch. No amount of argumentative logic will sustain the challenge of the workman to shirk the responsibility of work of Head cashier allotted by the management as communicated in notification issued by the Bank of India, Kaushalpuri Branch.One Bank clerical staff cannot be exonerated from the duty of Head Cashier by his own choice. If such choice is allowed to the employees of the bank it will result in devastating collapse of the banking system and public at large are likely to be affected by such illogical choice. It is axiomatic that one bank clerical staff is bound discharge work as head cashier as and when directed by management and no choice of the employee can be permitted for shirking such responsibility . Answer to the above both the points go against the workman and in favour of the management

The reference stands disposed of and parties are left to bear respective costs.

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

Date: 12.09.2022

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2022

का.आ. 886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी.सी.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह - श्रम न्यायालय नंव 2, धनबाद के पंचाट (संदर्भ संख्या 05/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.09.2022 को प्राप्त हुआ था।

[सं. एल-20012/30/2018-आई.आर(सी एम-I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 22nd September, 2022

S.O. 886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2018) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the Management of B.C.C.L. and their workmen, received by the Central Government on *16/09/2022*

[No. L-20012/30/2018 – IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD.

Present : Dr.S.K.Thakur, Presiding Officer.

IN THE MATTER OF AN INDUSTRIAL DISPUTE UNDER SECTION 10(1) (D) OF THE I.D. ACT., 1947.

REFERENCE NO 05 OF 2018.

PARTIES: : Sri D. Mukherjee ,
Bihar Colliery Kamgar Union,
Jharnapara, Hirapur,
Dhanbad. (Jharkhand)
Vs.
The General Manager,
Barora Area of M/s B.C.C.L.,
P.O. Nawagarh,
Dhanbad (Jharkhand).

Order No. L-20012/30/2018-IR(CM-I) dt. 31.05.2018

APPEARANCES :
On behalf of the workman/Union : : Mr.D.Mukherjee Ld. Advocate.
On behalf of the Management : Mr.D.K.Verma, Ld. Advocate.

State : Jharkhand **Industry : Coal**

Dated, Dhanbad, the 22nd June , 2022

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-20012/30/2018-IR (CM-I) dt. 31.05.2018.**

SCHEDULE

Whether the action of the management of Muraidih Colliery under Barora Area No. 1 of M/s BCCL in denying unfit on medical ground to Sri Ramji Saw, Ex. Driver having Pers. No. 01169911 is proper, legal and justified? If not, what relief the concerned workman is entitled to and from which date? And also what other directions are necessary in this regard."

2. On receipt of the **Order No. L-20012/30/2018-IR (CM-I) dt. 31.05.2018** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute of the issues as framed under Order of the Reference, it was registered as Industrial Dispute bearing Case No. No. 05 of 2018 on 11.06.2018 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

The facts in brief, are set out in the Written Statement of Claim by the Union as under:

i) That Sri Ramji Saw had been working as Driver-cum-Mechanic under Barora Area No. 1 of M/s BCCL since long with unblemished record of service.

ii) That the Management was biased and prejudicial against the workman on previous occasion also the workman was dismissed from service on false charges as he refused to oblige the officer in driving their private vehicle.

iii) That the Tribunal held that the dismissal was illegal so as per Award of the Tribunal the workman was reinstated with back wages

iv) That the workman concerned was heart patient have also others diseases which incapacitated him for doing his original duty of Driver cum Mechanic.

v) The concerned workman was initially under treatment of the Central Hopital, Dhanbad in the year 2008 where he was diagnosed to have suffering from acute heart ailment.

vi) The Doctor of the hospital referred the workman to Biral Heart Centre, Kolkata for treatment where his angiography/angiogram of the heart was conducted in April, 2008 where the workman was advised for Angioplasty of I.AD. because of blockage of major Artery which is 100%

vii) That due 100 percent blockage Stent was inserted into workman's heart .After that the workman was discharged from Birla Heart Centre on 17.06.2008 with advice to continue he Medicine and take proper rest.

viii) That upon reporting for duty for having discharged from Birla Heart Centre, Kolkata the Management allowed him to join duty.

ix) That after joining the service the after some days the workman again started getting ill and was unable to perform his duty so against he started taking treatment from the Company's Hospital.

x) That due to the aforesaid fact the workman submitted to the Management that due to illness and heart surgery he is unable to perform his duty so he be referred to the Company's Medical Board for determination of his fitness.

xi) That the NCWA is a settlement and as per settlement the dependent of unfit workman shall be given employment so the Management intentionally did not refer him to Medical Board to victimize him and advised to him to mark his attendance and if possible perform some light duty. The aforesaid advice and attitude of the management ipso-facto shows that the management was very much aware and conscious of the fact that the workman is unfit for the original jobs.

xii) That due to illness the workman was not in a position to remain in colliery for eight hours to attend even light duty so he again prayed before the Management to refer him to Medical Board.

xiii) That he appeared in the Medical Board and submitted all document of Birla heart Centre and he also stated his physical condition but surprisingly enough the Medical Board without conducting ECG,ECO Cardiogram or Trade Mill test mechanically declared him fit as per direction of the management.

xiv) That the workman concerned vehement protested against the illegal finding of the Medical Board and requested the Management to get his Medical test being done by the Civil Surgeon, Dhanbad but to no effect.

xv) That in view of the adamant and anti-labour attitude of the Management the Union raised an Industrial Dispute which ended in failure due to adamant attitude of the management with birth of the instant Industrial dispute.

xvi) That the action of the management in denying unfit on medical ground to Sri Ramji Saw was illegal, arbitrary, unjustified, inhuman, discriminary and against the principal of natural justice ,thereby seeking to be declared unit at least from the date of discharge from the Birla Heart centre and to provide dependent employment his dependant with retrospective effect with all arrears of wages.

3. Contrary to the claim of the Union ,the counter claim of O.P./Management came out that the present case is not maintainable either in facts or in law as per settled principle of law that the appointment on compassionate ground/dependent employment cannot be granted in de-hors rules framed in respect of thereof, and submitted following counter reply :

i) That the present reference is not maintainable either in law or in fact. It is well settled principle of law that the appointment of compassionate ground/dependant employment cannot be granted in dehors rules framed in respect of thereof. The compassionate appointment/dependant employment is a concession based under the social security scheme and not vested right which can be claimed .agitated at any point of time.

ii) That Sri Ramjee Saw was an ex-employee of Muraidih Colliery having Pers. No. 01169911 and was designated as Driver, retired from the services of Company w.e.f. 31.10.2015 on attaining the age of superannuation.

iii) That the subject matter of the aforesaid reference does not constitute an industrial dispute within the meaning of Sec. 2(K) of the I.D.Act1947.a superannuated employee is not workman within the meaning of Sec. 2(s) of the I.D.Act, 1947, hence reference is not fit for adjudication.

iv) That the workman was diagnosed with case of CAD and was getting treatment for the same after being referred to concerned hospital by appropriate authority for further treatment, but he has not been declared incapacitated by the experts.

v) That Sri Ramji Saw was initially referred to Central Hospital Dhanbad for treatment from where he was referred to Specialized Hospital –B.M.Birla Heart Research Centre, Kolkata for further treatment as and when required .

vi) That as per Medical fitness given by the Company 's Doctor Medical Practitioner he was allowed to

resume duty when Sri Ramjee Saw present himself for duty .He has also performed his duty till his retirement.

vii) That the fitness of the employee is checked by company Medical Practicner and based on the report an employee is allowed to resume duty and Sri Saw's was taken care of through Area Medical and forwarded to Competent Authority. .

viii) That after his discharged from Birla Research Centre, Kolkata he was allowed to resume duty when he reported for work with Medical Fitness from the Company Hospital. It is pertinent to mention that medical facility w and treatment is provided to an employee as per norms of the company and his health.

ix) So the demand of the Union for employment of son of the workman is illegal as there is no harness as it seemingly appears.

x) Post superannuation there is no claim to be made out about appointment in lieu of medical unfit, if any. Nor is there any obligation on the Part of the OP/Management to provide the succor as duty bound.

xi) In their supplementary statement in rejoinder the OP/management point-wise denied all the claim as raised in the written statement ,with reiteration that the demand for dependant employment is illegal and unjustified as he is not entitled to get any relief.

In their supplementary statement in rejoinder the OP/management point-wise denied all the claim as raised in the written statement ,with reiteration that the demand for dependant employment is illegal and unjustified as he is not entitled to get any relief. Thus the documents relied on by the Union /workmen are clearly distinguishable relating to treatment of the workman and related correspondents which have no application to the facts of the case.

4. In support of his contention the workman filed a list with the following documents therewith to prove his case.

A) Copy of application to GM, (HRD),Kalyan Bhawan,Dhanbad dt.25.11.2014

b) Copy of application to Director (Karmik),Koyla Bhawan, Dhanbad dt.05.02.2015

c) Copy of application to the Hon'ble President of India dt.25.05.2015

d) Postal Receipt for application to the President of India and to the others

e) Copy of application to Director (Karmik)-cum-Chairman, Apex Medical Board M/s BCCL, Koyla Bhawan,Dhanbad dt.19.09.2015

f) Copy of application to Chairman-cum-Managing Director of M/s BCCL, Koyla Bhawan,Dhanbad dt. 19.09.2015

g) Copy of application to Chairman-cum-Managing Director of M/s BCCL, Koyla Bhawan, Dhanbad dt. 27.10.2015.

h) Copy of Note Sheet for subject matter of Appellate Medical Board for 9.4.0. held on 24.10.2015.

i) Copy of Discharge Certificate from Central hospital M/s BCCL, Dhanbad dt. 02.11.2015

j) O.P.D. Card prescribed by B.M. Birla Heart Research Centre, Kolkata vide dt. 10.11.2008

k) Discharge Summary report prescribed by B.M.Birla Heart Research Centre, Kolkata dated 02.06.2008 to 17.06.2008

l) Cardiologist report by B.M.Birla, Heart Research Centre, Kolkata

m) Copy of Scan

n) Discharge Summary report by B.M.Birla Heart Research Centre, Kolkata dated 07.04.2008 to 09.04.2008

o) Copy of discharge certificate by Central Hospital, Dhanbad dated 12.01.2008 on the time of first attack.

p) Wireless message dated 15.01.2015

q) Letter of Board secretariat dated 15.07.2014 issued by Hospital

r) Wireless message, related to subject: result of the Apex Medical Board (9.4.0) held from 13.08.2015 to 14.08.2015 numbering twenty four employees

s) Wireless message, related to subject: result of the Apex Medical Board (9.4.0) held from 13.08.2015 to 14.08.2015 numbering eighteen employees

t) Prescription of workman treated by M.O., R.H. Baghmara BCCL dt. 01.12.2018

u) Prescription of workman Ramjee Saw treated by M.O., R.H. Baghmara BCCL dt. 09.04.2018.

v) Prescription of workman treated by M.O., R.H. Baghmara BCCL dt. 01.12.2018

w) Prescription of workman treated by M.O., R.H. Baghmara BCCL dt. 02.08.2019

Attendance sheet of workman for years 2012 to 2015.

5 In course of argument the OP/Management filed the following set of documents with copies thereof in support of their contention at the relevant point time of hearing

i) Annexure- I Retirement Notice to the workman (Ramjee Saw)

ii) Annexure -II particulars of Leave for the last four years preceding the workman's retirement

iii) Annexure- III Result of the Appellate Medical Board for 9.4.0 held on 24.10.2015

iv) Annexure –IV Pay-slip of the workman for the year 2013 and Month December

v) Annexure- IV (I) Pay-slip of the workman for the year 2014 and Month December

vi) Annexure -IV (II) Pay-slip of the workman for the year 2015 and Month December

6. In their supplementary statement in rejoinder the OP/management point-wise denied all the claim as raised in the written statement ,with reiteration that the demand for dependant employment is illegal and unjustified as he is not entitled to get any relief. Thus the documents relied by the Union /workmen are clearly distinguishable relating to treatment of the workman and related correspondences which have no application to the facts of the case.

7. During the course of arguments the Management contended that the notable point for consideration in the fact of the case is that the date of operation of the workman is year 2008 and the date of his retirement in the year 31.10.2015.This was a major operation but the Company kept his name on Company's roll for seven years only to deny him dependent employment is not imaginable from any thinking. The workman had been suffering from a long history of chronic heart ailments during the his employment leading to workman's hospitalization time and again for health issues but his being unfit was not declared at any point of time during the employment of workman and he superannuated as usual on attaining the age of superannuation. The workman laid much emphasis on dependant employment on the condition of being declared medically unfit could not yield desired result. The Medical Board finally ruled out his being declared medically unfit for job based on his health issue after examination. So far as the Medical examination is concerned by the Board constituted comprising of Doctors after examination it was informed by the team and also communicated by competent authority to the employee that his case for benefit under provision related to being declared medically unfit was disallowed as he was declared fit.

8. From the perusal of the statements of claim of the workman, the statement of the OP/Management ,documents filed by both sides and the arguments, it is observed that the OP/Management has extended required assistance to the workman for his medical treatment and even treated at the Specialized Centre-namely Birla Heart Research Centre, Kolkata and also subsequent to his operation at specialized Centre at Kolkata treatment was facilitated in BCCL own Hospital.

But the workman has shown his interest less on his treatment of his medical problems rather has insisted on declaring him unfit. The hidden agenda of the workman in insistance for declaring him medically unfit was with the sole intention of obtaining employment to his dependant in his place after his removal from the service on the ground of declaring him medically unfit.

9. Whereas, on examination of submissions it has been further observed that the OP/Management has been considerate enough in keeping him in service with lighter work instead of his strenuous work assignment before his facing medical problems. No fault could be found on the part of the Management either assisting the concerned workman for his required medical facilities or his continuance in service with lighter work till his superannuation.

10. It is also found that the concerned workman has represented to the OP/Management straightway for referring him to the concerned Medical Board for declaring him unfit rather presenting him before the concerned Hospital for treatment and or reference to the referral Hospital or the concerned Medical Board through proper channel of medical treatment. The Management cannot be forced to fulfill the desire of the workman as per his wish and with a particular agenda for declaring him unfit for consequential gain in the form of employment to his dependant on declaring him medically unfit from the service.

11. From the documents filed by the workman on 02.01.2019 the document at Sl. No. 18 is the wireless message from CMO I/C (MB), Koyla Nagar Hospital to the G.M.-Barora, Block II, Govindpur, Katras ,Sijua,-Kusunda,P.B. Area Lodan, EJ Area, CV Area. This wireless message relates to the "Result of the Apex Medical Board (9.4.0) held from 13.08.2015 to 14.08.2015.In the same report name of 24 employees have been mentioned, who have not been given the benefit of 9.4.0. including concerned workman mentioned at Sl. No. 14. Through another report listed at Sl.

No. 19 of above filed documents 18 employees has been declared medically unfit. As thus no prejudice and biasness of the Management against this workman can be derived and so claim of the workman of discrimination is found not correct.

12. Therefore, no prejudice is observed on behalf of the OP/Management against the concerned workman rather the Management is seen showing benevolence towards the workman for his required medical treatment and continuance in the service even with the lighter work than the post he was appointed for. As such the claim of the concerned workman is dismissed. He does not deserve any relief and so no relief is awarded.

Dr. S.K.THAKUR, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2022

का.आ. 887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय **नं.** 2, धनबाद के पंचाट (संदर्भ सं. 16/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/09/2022 को प्राप्त हुआ था।

[सं. एल-20012/198/2003-आई.आर(कोल-I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 22nd September, 2022

S.O. 887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2004) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the Management of C.C.L. and their workmen, received by the Central Government on *16/09/2022.*

[No. L-20012/198/2003 – IR (C-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD.

Present: Dr.S.K.Thakur, Presiding Officer.

IN THE MATTER OF AN INDUSTRIAL DISPUTE UNDER SECTION 10(1) (D) OF THE I.D. ACT., 1947.

REFERENCE NO 16 OF 2004.

PARTIES: : The Organization Secretary,
Rashtriya Colliery Mazdoor Sangh,
Camp: Piper war,
PO: Bachra, Distt; Chatra
Vs.
The Chief General Manager,
Piperwar Area of M/s CCL,
PO: Bachra,
Distt: Chatra

Order No. L-20012/198/2003-IR(C-I) dated 24.12.2003.

APPEARANCES :
On behalf of the workman/Union : : Mr. D. Mukherjee Ld. Advocate & others .
On behalf of the Management : Mr. D.K.Verma Ld. Advocate & others

State : Jharkhand Industry : Coal
Dated, Dhanbad, the 22nd June , 2022

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-20012/198/2003-IR(C-I) dated 24.12.2003.**

SCHEDULE

Whether the demand of the RCMS from the Management of M/s Central Coal field Limited for promoting Sri R.P. Sinha, Welfare Worker (FW) to the post of Social Worker (FW) as per old career scheme from due date is justified? If so, to what relief is the concerned workman entitled and from what date?"

2. Upon registration of the Reference Industrial Dispute on 12.01.2004, cognizance was taken by this Tribunal and the proceeding was initiated by issuing summons to both parties. The Sponsoring Union/workman appeared through Ld. Advocate and filed W.S. on 01.09.2004 and copy issued upon Opposite Party through Ld. Advocate. Thereafter O.P./Company filed their written statement. The subject matter was set in motion for proceeding .Both parties then entered into appearance engaging Ld. Lawyer by each of them and filed their respective claims. The matter proceeded crossing over evidences and finally arrived on arguments before it stands reserved for answering the Reference.

3. The fact of the case as made out by the workman in the instant reference is summarized under the Written Statement of Claim as following :

i) That Workman concerned R.P.Sinha was appointed as Welfare Worker (Family Welfare) in the erstwhile Coal Mines Welfare Organization that was merged with Coal India Ltd.

ii) That The Coal Mines Welfare Organization was merged with Coal India Ltd.,

iii) That the concerned workman's service was merged and taken over by the Central Coal Field Ltd.,a Subsidiary of Coal India Ltd.

iv) That there is no cadre scheme for promotion of welfare worker (F.W.) to the higher post in Central Coalfields Ltd.

v) That, there was a Cadre Scheme/Settled Principle/Policy decision for promotion avenue of welfare worker (F.W.) to the post of Social Worker (F.W.) Asstt. Welfare Administrator and Welfare Administrator etc.

vi) That, there is no Cadre Scheme/Settle Principle/Policy decision for promotion and upliftment of Welfare workman (F.W.) so the Management adopted the cadre Scheme/policy decision/settle Principle of Ex. C.M.W.O.

vii) The workman concerned who was also entitled for his promotion to the post of Social Worker F.W. as per Cadre Scheme/policy decision/Settlement Principle of EX-C.M.L.W.O,

viii) That the Management considered the promotion of the concerned workman along with other workman to the higher post and accordingly DPC was held and the DPC considered the case of the concerned workman along with Smt. Nirmala Sharma and others.

ix) That the management considered the promotion of the workman concerned along with other workmen to the higher post and accordingly DPC was held and the DPC considered the case of the concerned workman along with Smt. Nirmala Sharma and others. That the DPC considered the workman concerned competent/efficient suitable for promotion to the Higher Grade and accordingly.

x) That the Management illegally and arbitrarily and in utter violation of settled Principle and Policy decision promoted to the post of Field Worker rather from the post of Social Worker (F.W.) with promotion of Smt. Nirmala Sharma to the post of Asstt. Welfare Administrator based on Cadre Scheme of C.M.L.W.O.

xi) That it may not be out of place to mention that Smt. Nirmala Sarma was promoted to the post of Asst. Welfare Administrator as per Cadre Scheme of C.M.L.W.O.

xii) The workman represented against this illegal and discriminatory promotion. Despite Management's positive assurance and after waiting for a reasonable time and exhausting all avenues for amicable settlement the Union raised the Industrial Dispute before A.L.C. (C),Ranchi and subsequent failure in conciliation led to the Reference , calling the action of the Management as illegal, arbitrary, unjustified and against the principle of Natural justice, thereby seeking direction for promotion to the post of Social worker (F.W.) from January,1991 and to the post of Asstt. Welfare Administrator at least w.e.f. 1993-94 with consequential benefits with arrears and attendant benefit etc.

4. On the other hand, contrary to the Workman's statement of the Sponsoring Union, the O.P./Management of Central Coal Fields Ltd.(CCL) contested and defended the action of the Management by filing the counter Written Statement categorically denying all material allegations with following statement in the matter:

i) That the present Reference is not maintainable either in Law and fact as raised belatedly after a lapse of one decade.

ii) That the workman concerned was an employee of Coal Mines Welfare Organization and at the time of merger of Coal Mines Welfare Organization all the employees of C.M.W.O. were given opportunity to submit their option forms.

iii) That workman opted for Option II.

iv) That as per Option No. II the employees who opted Option II are entitled for pay scale and terms and conditions of the subsidiary of Coal India Ltd. and that being the position the workman concerned became the employees of Central Coalfields Ltd from the date of absorption with pay scale and terms and conditions of CCL.

v) At the time of merger the workman concerned was designated as a Welfare Worker and therefore he was placed in Grade "D".

vi) That the workman concerned opted for pay scale and terms and conditions of CCL and so he is not entitled for promotion as per the Cadre Scheme of erstwhile C.M.W.O.

vii) That in the year 1990 the Management of CCL conducted the Departmental Promotion Committee (DPC) proceeding in which the workman concerned was also a candidate to find his suitability for candidature.

viii) That the DPC held on 05.12.1990 was constituted to consider the case of eligible CMWO employees which was taken over on 01.10.1986 against the sanctioned vacancy.

ix) That the said DPC recommended the name of workman concerned for promotion as Field Worker (Tech) Grade- C subject to vacancy.

x) That, on the basis of the said recommendation post of Field Worker was offered to the workman with direction that promotion will be effective from the date the employee assumes charge on promotion to the higher post and with one year probation. The workman concerned assumed the charge on promotion as above. The Management justified the said promotion vide Office Order dt. 24.01.1991 as legal and justified.

xi) That the Deptt. Promotional Committee (DPC) considered all aspects while recommending the name of workman concerned for promotion as Field Worker in Technical Grade "C".

xii) That the demand of the Sponsoring Union is neither legal nor justified.

5. In the supplementary Rejoinder the O.P./Management came out categorically denying all the points raised by the Sponsoring Union/workman and reiterated the stand by the action as legal and justified with prayer that workman concerned is not entitled to any relief.

6. Similarly the Sponsoring Union/workman denied all the points raised by the O.P./Management with reiteration that there is no merit in the written statement of the Management upholding that the concerned workman is not entitled to any relief.

7. The workman in course of adducing evidence deposed himself and was cross- examined with filing of list with Xerox copy of the documents therewith. Copy of the following documents were produced and proved from the side of the union :

i) WWI- represents Representation of the Sponsoring Union /workman on the anomalies to the O.P/Management marked as W-I series

ii) Representation to the Director (Pers.), CCL, Ranchi marked as Ext. W.-I/I.

iii) Copy of the Joining Report of the workman marked as Ext.W-I-2

iv) Copy of the office orders of CCL marked as W1/3

v) Copy of the representation of the workman concerned to GM, CCL, Ranchi marked as Ext W-1/4

vi) Copy of the Joining Report marked as W-2

8. On examination of submissions and evidences it is found that the main cause and ground of grievance of the workman is that other employee of same CMWO merged with CCL has got promotion to higher grade and post compared to him whom the workman considers as equal and on same footing .The specific instance cited was of one namely Smt. Nirmala Sharma by the workman in the said Industrial Dispute who was promoted to the post of Asstt. Welfare Administrator from the post of Social worker as per documents filed/exhibited by the workman ,that is, DPC proceeding dt. 05.12.90. Many other employees including the workman concerned and the cited employee Mrs. Nirmala Sharma have also been recommended in the same DPC proceeding. Notably Sri R.P.Sinha workman concerned was promoted to Field Worker (Tech.) Gr. C from Welfare Worker (F/W)Grade -D subject to vacancy. The said DPC comprising of officials of the Central Coalfields Ltd recommended for consideration of Smt. Nirmala

Sharma from the post of Social Worker (Tech.) Gr. B to Asstt. Welfare Administration Gr. A (Tech.) (Ext. W-4) whereas this workman has been promoted from existing Gr. D to Gr. C. Comparing with the said example assuming to be on same footing on similar set of circumstances does not appear to be well merited or having any relevancy to the present set of fact as the cited case of Smt.Nirmala Sharma is that she was in Gr. B at the time of merger whereas the concerned worker was in Gr.D. Like him others have also been recommended for promotion from Welfare Worker to Field Worker through the same DPC proceeding. The scheme of career promotion through DPC is a well settled policy. There is no prejudice or discriminatory attitude has been observed to be caused to the workman by the Management in the promotion of the workman.

9. Therefore, based on the submissions by both sides along with the documents and evidences the claim of the workman is not established nor justified. And so the workman is not entitled for any relief as claimed and for which the Reference has been made for adjudication .No relief is awarded accordingly as the claim stands dismissed.

Dr. S.K.THAKUR, Presiding Officer

नई दिल्ली, 23 सितम्बर, 2022

का.आ. 888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 65/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2022 को प्राप्त हुआ था।

[सं. एल-22012/61/2018-आई. आर. (सी एम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 23rd September, 2022

S.O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2018) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on *21/092022.*

[No. L-22012/61/2018 – IR (CM-II)]
RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/65/2018

Present: P.K.Srivastava H.J.S..(Retd)

The Secretary
Johilla Area
SECL
PO-Naurazabad, District Umaria(M.P.) ...Workman

Versus

The Chief Manager,
Johilla Area
SECL
PO-Naurazabad, District Umaria(M.P.)

2.The Sub Area manager
Johilla Area
SECL
PO-Naurazabad, District Umaria(M.P.)
3.The Khan Prabhandak
Johilla Area
SECL
PO-Naurazabad, District Umaria(M.P.) ...Management

AWARD

(Passed on 8-8-2022.)

As per letter dated 13/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/61/2018-IR(CM-II). The dispute under reference relates to:

"***SECL Pipariya Colliery Pravbhandak dwara Shri Charku Baigh ko galat tarah se Janch Karyawahi karte houe Prakrutek nyay ke sidhanton ke verudh Seva se Barkhast Karna kya uchhit hai?Yadi Nahi to karmkar Shri Charku Baigh kya anutosh paane ke haqdar hain?" .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Inspite of service of notice on the workman, he never appeared. He did not file any statement of claim.

2. The Management filed its statement of defense according to which the workman was appointed as General Mazdoor Token No.910P at Piparia Colliery of SECL Johilla Area on 19-10-1996. He was not regular in his duties and was a habitual absentee from duty from 24-3-2008 without getting any leave sanctioned or intimation to Management which is a misconduct under para 26.24 and 26.30 of Certified Standing Orders. He was issued a charge sheet on 7-7-2008. A Departmental Inquiry was conducted. The notice of departmental inquiry was served on him. He appeared in the Inquiry and took part in the proceedings. The Inquiry Officer found the charges proved and submitted his inquiry report to the Disciplinary Authority who passed the order of punishment on 23-11-2009 terminating him from his services, after giving him opportunity of hearing on the inquiry report. It is further the case of the Management that the dispute was raised after 8 years from the date of termination, hence is barred by delays and latches. Accordingly, the management has submitted that the reference be answered against the workman.

3. At the stage of evidence also, the workman never appeared and did not produce any evidence. The reference proceeded ex-parte against the workman.

4. The management filed affidavit of Shri Tantee Bhonde, Management Personnel and has filed the inquiry papers with the affidavit.

5. I have heard ex-parte arguments of Mr. A.K.Shashi, learned counsel for the Management and have gone through the record.

6. Three points arises in the case in hand for consideration:-

1.Whether the inquiry held was legal and proper?"

2.Whether the charges are proved from the inquiry?"

3.Whether the punishment is proportionate to the charge?"

7. For the sake of convenience all these points are being taken together.

8. The burden to prove that the inquiry conducted was not legal and proper was on workman. There is no pleadings or proof from the side of the workman on this point. I have gone through the photocopy inquiry papers which goes to show that the workman did participate in the Inquiry. He was given the opportunity of hearing by Disciplinary Authority before passing the sentence, hence there is nothing on record to hold against the inquiry. Consequently the departmental inquiry is held legal and proper.

9. From the perusal of evidence on record conducted during the inquiry, it comes out that the charges against the workman regarding willful absenteeism is held proved.

10.According to the Certified Standing Orders, the willful absenteeism for a long period is major misconduct inviting major punishment. There is no evidence to indicate that the punishment was disproportionate to the charge, hence the punishment is held proportionate to the charge.

11. In the light of the above findings, the reference deserves to be decided against the workman and is decided accordingly.

12. On the basis of the above discussion, following award is passed:-

A.The action of the management as mentioned in the reference is held to be just and proper.

B.The workman is held entitled to no relief.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 8-8-2022

नई दिल्ली, 23 सितम्बर, 2022

का.आ. 889—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह-श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 72/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2022 को प्राप्त हुआ था।

[सं. एल- 22012/83/2019-आई. आर. (सी एम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 23rd September, 2022

S.O. 889.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2019) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on *21/09/2022.*

[No. L-22012/83/2019–IR(CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/72/2019

Present: P.K.Srivastava H.J.S..(Retd)

The Secretary,
Bihar Coliery kamgar Union(CITU)
Central Office-Temple road
Purana Bazar, Dhanbad(Jharkhand)-826001 ...Workman

Versus

The Sub Area Manager,
SECL,
Dhelwadih Singhali Bhagdewa Sub Area
Korba Area
District Korba(Chhattisgarh)-495677 ...Management

AWARD

(Passed on 8-8-2022.)

As per letter dated 24-10-2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/83/2019-IR(CM-II). The dispute under reference relates to:

> "***Whether the action of the SECL management in not posting Shri Het Ram Chelak , S/o shri Late Maya Ram as a Conveyor belot operator (surface) on his Trnsfer from BCL where he worked as a conveyor belt operator(surface) for 17 years is fair and justified? If not to what relief the workman is entitled to? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Inspite of service of notice the workman never appeared. The parties have filed their respective statement of claim/defense.

2. According to the workman Union the workman Het Ram Chelak working as a Conveyor Belt Operator(Surface) was transferred from BCCL to SECL Bilaspur vide letter of management dated 6-6-2018 issued by the General Manager CIL Kolkata. He joined at Bilaspur on 9-7-2018 and was posted under ground conveyor belt operator instead of conveyor belt operator(surface) inspite of the fact that before his transfer, he was working as conveyor belt operator(surface). According to the workman Union, this action of Management is in violation of Section 9A of the Industrial Disputes Act,1947(hereinafter referred to as the word'Act') was change in service conditions by Management without notice. Accordingly, it has been prayed that holding the action of Management unjustified and unfair, he be directed to be relocated as Conveyor Belt Operator(Surface).

3. The case of the management is mainly that the workman is was appointed as General Mazdoor Category-1 under Dependent Employment Provisions of NCWA-VI on the death of his father who was in service of BCCL. It was nowhere in his service conditions and appointment letter that he would be given job of Surface only. His services were transferable to any part of India accepting the terms and conditions. He worked as General mazdoor in BCCL in the year 2003 on Surface duty. Thereafter he was promoted as Conveyor Belt Operator. A conveyor belt operator could be posted on surface and underground both. He was transferred to SECL, accepting his request to transfer on the ground of sickness of his mother and was given work as Conveyor Belt Operator underground based on the administrative requirement of the Management. According to the Management, posting in underground Mine on the same post does not in any way take away any benefit of the workman , rather he is given additional allowance for working underground. The case of the management is that such an action of Management is not change in service conditions, hence Section 9A of the Industrial Disputes Act is not attracted. Accordingly the management has requested that the reference be answered against the workman.

4. The workman never appeared thereafter and did not file any evidence, hence the case proceeded ex-parte against the workman.

5. The management filed affidavit of its witness Shri Dinesh Singh, Manager Personnel which is uncross-examined as the workman did not appear to avail the opportunity of cross-examination. I have heard ex-parte argument of Mr. A.K.Shashi, learned counsel for the Management and have gone through the record.

6. The Reference, itself is the issue for determination, in the case in hand.

7. Section 9A of the Industrial Disputes Act,1947 is being reproduced as under:-

9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(*a*) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(*b*) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change—

(*a*) where the change is effected in pursuance of any 2[settlement or award]; or

(*b*) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

8. The initial burden to prove his case lies on the workman. He has not produced any evidence in support of his claim. The affidavit of the Management witness corroborates the case of the Management. Hence holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

9. On the basis of the above discussion, following award is passed:-

A. The action of the management of the SECL in not posting Shri Het Ram Chelak , S/o shri Late Maya Ram as a Conveyor belt operator (surface) on his Transfer from BCCL where he worked as a conveyor belt operator(surface) for 17 years is held to be justified.

B. The workman is held entitled to no relief.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 8-8-022

नई दिल्ली, 19 सितम्बर, 2022

का.आ. 890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह-श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं 40/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.09.2022 को प्राप्त हुआ था।

[सं. एल -22012/13/2016-आई. आर. (सी एम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 19th September, 2022

S.O. 890.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2016) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on *21/092022.*

[No. L-22012/13/2016 – IR (CM-II)]
RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/40/2016

Present: P.K.Srivastava H.J.S..(Retd)

Shri Bhagwat Prasad Dubey,
General Secretary,
Rashtriya Colliery Workers's Federation
Federation Office,Chirmiri,
District Korea(C.G.) ...Workman

Versus

The General manager,
Chirimiri Area of SECL
PO:West Chirimiri
District Korea(CG)-497773
Korea (Chhattisgarh) ...Management

AWARD

(Passed on 30-8-22.)

As per letter dated 26/4/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/13/2016-IR(CM-II) The dispute under reference relates to:

> "***Whether the action of the management of Kurasia Colliery under the control of General Manager Chirmiri Area, SECL PO: West Chirmiri, district Korea(CG) in not initiating any actin towards the amendment in date of birth in form B register while in service as per Age Determination Committee in respect of the Ex-Employee.RPGH,Gr-E. Chirmiri OCM namely Shri Kameshwari S/o Kheduran espoused by the General Secretary, Rashtriya Colliery Workers Federation is appropriate and justified? If not, what relief the ex-employee Shri Kameshwar is entitled to?"*** ."

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of defense/claim.

2. The case of the workman as stated in his statement of claim is that workman Kameshwar Son of Kheduram was appointed on 1-4-1985 in Kurasia Colliery of SECL Chirmiri Area as Category-1 Mazdoor. No initial medical examination was held as required under Rule 29B. After his appointment, his age was arbitrarily recorded as 29 years in Form-B based on medical examination, alleged to have taken place on 24-9-1983 i.e. two years before his appointment. According to the workman Union his medical examination was not as per standard laid down in form-P of Mines Amendment Rules 1978, it is in violation of Rule 29H because there is no photograph of the workman Kameshwar and endorsement by the Examining Authority. His height was recorded as 180 cm in the medical examination report whereas the actually he is 170cm and in the opinion column the words" **provisionally medically fit subject to final medical examination**" is written. According to the workman Union, on the basis of this provisional medical examination, the date of birth of workman Kameshwar was recorded in Form-B, form PS-3 and Form PS-4 as 24-9-1954. The workman came to know about this wrong entry regarding his date of birth in the year 1990 when Management started distributing computerized salary slips. The workman filed various representations requesting the management to correct his date of birth. His first representation was filed on 14-10-1991. All his representations were unattended by Management and he was superannuated in September-2014 on the basis of his date of birth 24-9-1954, wrongly recorded in his service records as mentioned above. According to the workman Union, the Management has no right under Law to determine the age of the workman prior to appointment through medical examination because the initial process of medical examination is to assert whether the workman is physically

fit or not to take the job. Accordingly the workman Union has prayed that holding the action of Management against law, the Management be ordered to conduct medical examination as per medical jurisprudence of determining the actual age of workman Kameshwar in I.I.No.76 and till then the workman Kameshwar be allowed to assume duty as usual.

3. According to the management, Kameshwar was issued a letter dated 14-9-1983 to appear before Interview Committee with documents mentioned therein. He appeared before the Committee on 24-9-1983 for assessing his fitness in deployment in mines. He was appointed w.e.f. 1-4-1985 and was regularized as General mazdoor Category-1 w.e.f. 1-9-1987. He had submitted his domicile certificate dated 22-7-1981 issued by S.D.O. Mahendgarh. He had represented before management for rectification of date of birth including transfer certificate issued by Head Master, Government School, Badwa, District Aurangabad,Bihar and admit card for appearing in medical school examination issued by Secretary, Bihar Vidyalaya Pariksha Samiti School that he was studying in Aurangabad, Bihar and left school on 5-3-1980 as per his transfer certificate. According to the management, in his service records his permanent address was of M.P.State which was duly certified by him, whereas he studied in Bihar. This itself shows that he concealed material facts. It is further the case of the Management that his date of birth was recorded on the basis of information given by him. Also that at the time of initial appointment as a Mazdoor, he has represented himself as an illiterate person because the required qualification for mazdoor was illiterate person. He never raised any dispute regarding his age or date of birth at any point of time. The dispute was first raised for the first time after the order of Hon'ble Chhattisgarh High Court passed on 2-12-2013 in W.P.No.3904/2013. According to the management, there was no justification in changing his date of birth as there was no dispute on this point in the documents maintained by the Management. Accordingly the management has prayed that the reference be answered against the workman.

4. The workman has filed photocopy of I.I.76, medical examination Report, form-B admitted by Management and marked as Exw-1 to W-3. The Management has filed regularization order, domicile certificate, admit card, and transfer certificate form-O under Rule 29F. Order of Hon. High Court which are Exhibit m1 to m8 respectively. The Management has further filed photocopy of Form-B Service register. Another form-B PS-3, PS-4 and Report of Committee Constituted under orders of Hon. High Court of Chhattisgarh and letter of Management to the workman on the basis of the report of the Committee regarding age determination of workman having been marked as Exhibit M-9 to Exhibit M-15.

5. The workman has examined himself on oath. He has been cross-examined by management.

6. The management has examined its witness Sebernus Bristete Dy. Manager who has been cross-examined by the workman.

7. I have heard arguments of Union Representative and learned Counsel for the Management and have gone through the record.

8. The Reference itself is the issue for determination in the case in hand.

9. The Respective pleadings of the parties have been detailed earlier in this judgment. As it is apparent from the order of Hon. High Court of Chhattisgarh at Bilsapur in W.P.No.3904/2013 passed on 2-12-2013 it was directed that if the workman made a detailed representation to the Competent Authority within one month from the date of order, the Competent Authority shall consider and decide the same within further period of six months from the date of receipt of the representation, in accordance with law. Exhibit M-14 is the report of the Committee framed by the Competent Authority on the basis of the representation of the workman filed by him before the Competent Authority, in the light of the aforesaid order of the Hon. High Court. Perusal of this report reveals that the Committee has referred to the date of the birth of the workman as mentioned in form-B, service register extracts, CMPF form, PS-3 and PS-4, LTC register, date of birth as per I.M.E.. Date of Birth as per order No.502 dated 22-5-2013. The date of birth as per LPC dated 6-6-2013, wherein date of birth of the workman has been consistently recorded as 24-9-1954 except one documents CMPF form A in which it is recorded as 1-2-1964. The Committee according to the report also mentioned the date of birth of the workman written in Admit card and Transfer Certificate date 5-2-1990 wherein his date of birth is recorded as 4-6-1965. The Committee further observed that the workman himself signed documents containing his date of birth as 24-7-1954 and suppressed the information regarding his educational qualification at the time of his initial appointment to fetch employment as casual mazdoor, hence his date of birth 24-9-1954 as recorded in his service records as mentioned should be considered as correct. Exhibit M-15 is the letter of Management sent to the workman informing this decision of the Management.

10. The question arises as to whether the Committee adopted the correct procedure incorporated in I.I.No.76 in this respect or not?

11. Para A-II provides that record of age of non-matriculate but educated workman which is as follows:-

A. Determination of Age at the time of appointment:-

i. Matriculates:.....

ii Non-Matriculate but educated:

In case of appointees who have pursued studies in a recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances.

B Review determination of date of birth in respect of existing employees:

(a) **In the case of the existing employees Matriculation Certificate of Higher Secondary Certificate issued by the recognized Universities or board Middle Pass Certificate issued by the Board of Education and/ or Department of Public Instruction and admit cards issued by the aforesaid Bodies should be treated as correct provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.**

(b) **Similarly Mining Sirdar ship, winding Engine or similar other statutory certificate where the manager had to certify the date of birth will be treated as authentic provided that where both documents mentioned in (I)(a) and (i) (b) above are available, the date of birth recorded in (i) (a) will be treated as authentic.**

(ii)Wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board.

(c) Age Determination Committee /Medical Board for the above will be constituted by the management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B) (i) (a) of (B) (i) (b) above, the date of birth recorded in the records of the company, namely form B Register. CMPF Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical board constituted by the management for determination age.

(D)For determination of the age, the Committee/Medical Board referred to above may consider the evidences available with the Colliery Management and/or adduced before the employee concerned.

(E)Medical Board constituted for determination of age will be required to assess the age in accordance with the requirement of "Medical Jurisprudence "and the Medical Board will as far as possible indicate the accurate age, assessed and not approximately.

(F) Where the management(i.e) Area Age Assessment Committee consisting of General Manager, Personnel manager and Medical Officer-in-Charge of the Area is satisfied that there is a glaring disparity between the date of birth recorded in the identity cards and the apparent age of the employee, the cases may be referred to the Apex Medical Board located at Headquarters of the company for determination of Age.

(H)After the assessment of the age by the Age Determination Committee/Medical Board the same will be computerized and print out of the same will be given to the employee concerned and the unit from the reference was received within a month. If age is not however, computerized, still the same will be intimated to the employee concerned and the Unit within a month.

(I) It was agreed that in cases where instead of date of birth, year has been recorded, 1st July of the year will be deemed to be the date of birth.

13. It becomes now clear that in case of employees who have cleared matriculation or higher secondary examination from recognized boards, their date of birth mentioned in the certificate shall be final and conclusive. Similarly if the workman has cleared Mining Sidarship, winding engine or other similar statutory services where the Manager had to certify the date of birth, it will be treated as final and authentic. It is further provided that , if the date of birth of the workman cannot be determined in accordance with the procedure as mentioned in para A and Para-B, the matter will be referred to the Age Determination committee. The Age Determination committee was framed by Management in compliance of order of Hon. High court as mentioned above. Hence the Age Determination Committee was required to follow the procedure laid down above as proved in I.I.No.76. The Age Determination Committee do not conduct any medical examination of the workman, which is clear from perusal of the record and report of the Committee. Now there was two sets or rather three sets of theory regarding date of birth of the workman. One set was 24-9-1954 as mentioned in various records maintained by the Management. Second was his date of birth 1-2-1964 mentioned in CMPF form maintained in the CMPF Office. All these forms contain these two date of birth and are signed by workman and have been prepared on the basis of declaration made by the workman regarding his

date of birth. The third date of birth is 4-6-1965 mentioned in the Admit card and transfer certificate of the workman which he filed before the Committee. Thus it is clear that his date of birth was not uniform rather it was different in different documents. Transfer certificate of the workman is Exhibit M-4. It has been issued on 5-9-1990. According to this certificate the workman was admitted o 11-1-1977 and left the school on 5-3-1980. His date of birth is mentioned as 4-6-1965 in admission register of the school. There is a domicile certificate filed by the workman which goes to show that he is domicile of Madhya Pradesh. This certificate has been issued on 22-1-1981, this is exhibit M-2. The Admit card exhibit M-3 on which the workman also relies shows that his registration for higher secondary examination was done in 1990 which is after the date of his first appointment. Form-B prepared at the time of initial appointment is exhibit M-3 which shows that his age and date of birth were recorded on the basis of medical certificate dated 24-9-1984. This medical certificate is Exhibit W-2. In this certificate, the age of the workman is mentioned as 29 years on the date of medical examination on 24-9-1983. The basis of the age of the workman as mentioned in this medical certificate Exhibit W-2 is not in this document, hence it can be assumed that either it was mentioned on the basis of information given by Doctor examining him or on the guess work regarding age done by the Doctor at that time. The workman denies that he told the Doctor regarding his age. The management witness has stated on oath that the workman had declared his age at the time of medical examination. This witness is not an eye witness for medical examination.

14. When there are conflicting documents regarding date of birth and age of the workman, it was incumbent on the Age Determination Committee constituted incompliance of order of Hon'ble High Court as mentioned above, to get the workman medically examined by a medical board on the point of his age, as it was submitted by the Union Representative. It is established that at the time of different examination the workman had crossed the age of 50 years at least. Medical science determines the age of a person on the basis of Ossification Test that is at the state of fusion of bones. Since by 50 all bones are already fused, it is not possible to give any opinion about the age of the workman, hence this exercise would be futile in the case of the workman as he had already crossed 50 years at least by that time. The workman is a literate person. He has signed on the various documents maintained by the Management with respect of his date of birth and age and he raised a dispute at the fag end of his career. The documents filed by him are prepared after the date of his appointment, hence the Age Determination Committee cannot be held to have erred in law in its report with respect to Age of the workman.

1. Consequently the action of the Management in rejecting the claim of the workman regarding his date of birth **as 1-2-1964 is held justified and the reference is answered accordingly.**

15. On the basis of the above discussion, following award is passed:-

A. The action of the management of Kurasia Colliery under the control of General Manager Chirmiri Area, SECL PO: West Chirmiri, district Korea(CG) in not initiating any actin towards the amendment in date of birth in form B register while in service as per Age Determination Committee in respect of the Ex-Employee.RPGH,Gr-E. Chirmiri OCM namely Shri Kameshwari S/o Kheduran espoused by the General Secretary, Rashtriya Colliery Workers Federation is held to be justified.

B. The workman is held entitled to no relief.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 30-8-2022

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 891.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 38/2015) प्रकाशित करती है।

[सं. एल-12011/41/2015-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 26th September, 2022

S.O. 891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.38/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[No. L-12011/41/2015 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIALTRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Monday the 28th day of March 2022,7 Caitra 1944)

ID No.38/2015

Workman/Union : The General Secretary
Union Bank of India Employees Federation
Nareshpal Centre
East of Lissie Hospital
Ernakulam - 682018
By Adv.Ashok B. Shenoy

Managements : 1. The Chairman and Managing Director
Union Bank of India
239 Bank Bay Relamation
Narimanpoint
Mumbai – 21

2. The Dy. General Manager
Union Bank of India
Nodal Regional Office
M. G. Road
Ernakulam – 682035

By Adv. M. S. Sajeev Kumar

This case coming up for final hearing on 06.11.2020 and 05.07.2021 and this Industrial Tribunal-cum-Labour Court on 28.03.2022 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry ofLabourby its order No. L-12011/41/2015-IR(B-II) dated 03.08.2015 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

" Whether the action of the Management of Union Bank in denying the demand of the Union for reinstatement with regularization of Sri.A. Manoharan when he requested for regularization of services is justified? If not, what relief they are entitled ? "

3. According to the Union, the workman was working as a temporary Sweeper in the Management Bank from 01/1990 to 12/2006 at their Kozhikode main Branch and Kozhikode Palayam Branch continuously and as a Peon-cum-Sweeper at their Tirur Branch continuously from 02.03.2007, since the opening of the Branch. The workman sent a representation dt.26.11.2011 to the Chairman and Managing Director of the Management Bank pointing out that he was working as a temporary Sweeper/peon continuously for 23 years and seeking absorption as a permanent employee. The Management in retaliation terminated the workman on 13.03.2012 without assigning any reason and without affording any notice or wages in lieu of notice. No compensation was also paid. The Union raised an industrial dispute before the Assistant Labour Commissioner (Central), Ernakulam. During the course of conciliation, the Conciliation Officer adviced the Management to absorb the workman as a permanent employee considering his long service. The Management Bank refused to accede to the direction in the conciliation proceedings. Termination of the workman amounts to retrenchment. Though the workman was employed for 23 years continuously and uninterruptedly from January 1990 to 13.03.2012, the Management Bank failed to issue any notice of retrenchment to the workman nor paid the workman wages in lieu of such notice, as mandated by Sec 25F of the Industrial Disputes Act, 1947. The Management also failed to pay the workman the retrenchment compensation as mandated by Sec 25F of the ID Act, 1947. The retrenchment is also illegal, unjust and void for violation of the provisions of Paragraphs 522, 523 and 524 of the Sastri Award governing the Management and the workman. Employees much junior in service to the workman are retained in service by the Management. This is violation of the mandatory provisions in Sec 25G of ID Act, 1947 and Para 507 of Sastri Award. Fresh and new hands have been employed by the Management in their services that too against the very same work and jobs for which the workman was employed. This is in violation of Sec 25H of ID Act and Clause 20.12 of 1st Bipartite Settlement dt.19.10.1996 and Para 493 of

Sastri Award. The termination of the workman is illegal, unjust as also void, apart from being tainted by malafides and victimization. The Management had entered into a Tripartite Settlement on 25.11.2013 for absorbing temporary employees working in the Management Bank, relaxing norms for recruitment and considering the increased number of temporary employees engaged by the Management against permanent vacancies and for filling up the permanent vacancies of Housekeeper-cum-Peon available in the Management Bank. The eligibility fixed was that the casual and temporary employee who had worked intermittently or continuously for atleast 360 days, during the last 5 years from 01.12.2008 to 30.12.2013 including 30 days during the immediately preceding one year from 01.12.2012 to 30.12.2013. The workman was an applicant. The workman was not called for interview on the plea that the workman did not satisfy the stipulation that he should have 30 days service during the period from 01.12.2012 to 30.12.2013. The workman could not satisfy the said requirement because he was illegally retrenched w.e.f. 13.03.2012. The workman was treated as a temporary workman against permanent vacancy just to deprive him of the status and privileges of a permanent workman. The Management was violating the statutory provisions in Awards and Bipartite Settlements. It amounts to unfair labour practice prohibited U/s 25T of ID Act and is in violation of Paras 20.7 and 20.8 of 1st Bipartite Settlement and also Para 495 and 522 of Sastri Award. In terms of Clause 20.12 of 1st Bipartite Settlement dt.19.10.1996 the Management is bound to retain and absorb the workman in regular services especially when the vacancy against which he was employed is permanent and continued to exist. Ever since retrenchment from service of the Management, the workman is without any job and income.

4. The Management filed written statement denying the above allegations. The dispute raised by the Claimant cannot be termed as an industrial dispute within the meaning of Sec 2(k) of Industrial Disputes Act, 1947. The Claimant was not employed at any point of time, in the Bank and therefore there is no question of termination of the workman. Unless the person is employed there can be no question of his being a 'workman'. The relationship of employer and employee cannot be inferred in this case. There was no contract of service between the Claimant and the Management Bank. He was never under the control or supervision of the Bank. He was not appointed or recruited by the Bank through the sponsorship of Employment Exchange. His name never appeared on the Muster Roll of the Management Bank. He was never paid any salary out of the Salary Account of the Bank. He was free to work for any other employer. It is a settled law that a person appointed temporarily on ad-hoc basis has no right to the post. The law regarding casual/temporary/ad-hoc appointees has been clarified by the Hon'ble Supreme Court in **Secretary, State of Karnataka Vs Uma Devi,** AIR 2006 SC 1806. In this case it was clearly held that appointments of casual labourers on ad-hoc basis amounted to "irregular appointment" and such irregular or backdoor entrants have no legal right of any kind whatsoever. The Tripartite Settlement dt.25.11.2013 was not for absorbing temporary employees working under the Management. The settlement was only to the effect of relaxing eligibility criteria for casual or temporary employees, thereby bringing them under "Relaxed Segment Category" who had worked intermittently or continuously for atleast 360 days, during the last 5 years from 01.12.2008 to 30.12.2013, including 30 days during the immediately preceding one year from 01.12.2012 to 30.12.2013. The application of the claimant was rejected, since he had not worked intermittently, any time during last 5 years ie., from 01.12.2008 to 31.12.2013, including 30 days during the last one year ie., 01.12.2012 to 30.11.2013. The Management cannot unilaterally relax the condition for appointment under the Relaxed Segment Category.The Claimant approached the Hon'ble High Court of Kerala in W.P.(C) no.15739/2014 and vide judgment dt.23.06.2014 the Hon'ble High Court dismissed the writ petition. The Hon'ble High Court upheld the contention of the Management that the claimant is not an eligible candidate for recruitment as he has not completed 30 days of continuous service for the period from 01.12.2012 to 30.11.2013. The question regarding the termination/retrenchment, if any, was left open to be agitated before the appropriate forum under ID Act.The allegation that the workman was a temporary employee of the Management Bank and was employed as Sweeper from January 1990 to December 2006 at Kozhikode Main Branch and Kozhikode Palayam Branch and as a Peon-cum-Sweeper at Tirur Branch continuously from 02.03.2007 is not correct. Even if it is assumed that he was a temporary employee, the same does not give him the right to get absorbed in the services of the Bank. The Management never engaged the claimant for doing any work. Rather he was preparing/selling tea to the Branch staff and in very rare occasions the claimant was asked to clean the premises, for which he was paid immediately after the work. The Management being a Govt of India undertaking is bound to follow the policies and procedures laid down in law as well as the directions given by the Govt of India. The Conciliation Officer does not have jurisdiction to pass an order directing the Bank to regularize services of the claimant or to give him appointment into the service of the Bank.The term "retrenchment" means termination by the employer of the service of the workman for any reason whatsoever. Since there is no retrenchment of service, the Management is neither required to issue any notice nor pay wages in lieu of such notice, as mandated U/s 25F of the ID Act. The claim of the workman that the Bank retained juniors when the services of the workman was terminated is not correct. The workman did not satisfied the requirement to be regularized as per the Tripartite Settlement. The workman cannot challenge the policy of Bank in terms of Sec 25G of ID Act as well as Para 507 of Sastri Award. The appointments to the Management Bank is done by observing the prescribed rules and regulations. The appointment of fresh and new people are being done strictly following the established procedures. There is no violation of Sec 25H of ID Act, Clause 20.12 of the 1st Bipartite Settlement dt.19.10.1996 and Para 493 of Sastri Award. It is absolutely false and illegal to allege that the Management has committed unfair labour practice prohibited U/s 25T of the ID Act. The workman has no right to claim any regularization as per the above provisions.

5. The Union filed rejoinder denying the allegations in the written statement filed by the Management. The workman was employed in the Management Bank for about 23 years. The employer-employee relationship between the Management and the workman is evident from the admission of the Management before the Hon'ble High Court of Kerala in W.P.(C) no.15739/2014. The workman was appointed as a Sweeper-cum-Peon by the Management Bank against regular permanent and sanctioned vacancy. No permanent staff was posted to the post during the period when the workman was employed. This can be ascertained from the attendance register maintained at the Branch during the relevant period which is under the exclusive custody of the Management Bank. Having extracted work from the workman for over two decades, it is unfair and unsustainable that the Management is trying to justify the retrenchment on technicalities. Had the workman not abruptly been retrenched on 13.03.2012, the workman would have come under the "Relaxed Segment Category" while absorbing similar temporary employees working under the Management as per the Tripartite Settlement. The workman could not participate in the selection process only because he had not worked for 30 days during the last one year period from 01.12.2012 to 30.11.2013 since the workman was retrenched on 13.03.2012. The Management employed the workman for 23 years and paid wages and hence he comes under the definition of Sec 2(s) of the Industrial Disputes Act. The workman was orally terminated on 13.03.2012 without complying with the mandatory obligations under the Act. He performed the job of perennial nature continuously and uninterruptedly. During the conciliation proceedings, the Conciliation Officer was convinced of the genuineness of the claim of the workman and therefore there was a suggestion either to reinstate the workman or to allow him to participate in the selection process of Housekeeper-cum-Peons. The said suggestion was rejected by the Bank. The documents, registers and vouchers in the custody of the Management were produced before the Conciliation Officer categorically establishing the employer-employee relationship between the Management and the workman. The wages paid to him was absorbed into the Profit & Loss account of the Bank.

6. After completion of the pleadings, the Union examined the workman as WW1 and marked Exbts.W1 to W5 through him. The Management examined MW1 and marked Exbt.M1 through him and also examined MW2 and marked Exbt.M2 series through the witness.

7. After completion of the pleadings the following issues are framed for adjudication

1. Whether the industrial dispute is maintainable ?
2. Whether the denial of the demand of the Union for reinstatement with regularization of the workman when he requested for regularization of service is correct and justified ?
3. Relief and cost ?

8. **Issue no.1**

The learned Counsel for the Management pointed out that the dispute raised by the workman cannot be termed as an industrial dispute within the meaning of Sec 2(k) of the Industrial Disputes Act ,1947 as the workman was never appointed by the Bank and never terminated him from the service of the Bank. As per the definition of Sec 2(s) of ID Act, the workman shall be employed to do the work in the industry which means that there should be an employer-employee relationship. The learned Counsel for the workman argued that the workman continuously worked for the Management Bank for more than 22 years and they paid him salary. Therefore the Management cannot plead that the present dispute raised by the workman cannot be termed as an industrial dispute. As per Sec 2(s);

> "Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –
>
> (i) ....
>
> (ii) ...
>
> (iii)...
>
> (iv)..."

The definition of workman as above falls in 3 parts. The 1st part of the definition gives the statutory meaning of workman. The 2nd part is designed to include persons who has been dismissed, discharged or retrenched in connection with an industrial dispute or whose dismissal, discharge or retrenchment has led to an industrial dispute. The 3rd part connotes that even if a person satisfied the requirements of any of first two parts, if he falls in any of the 4 categories in the 3rd part, he shall be excluded from the definition of

workman. In this particular case the claim of the Union is that the workman was engaged on a temporary basis against a permanent post for over 22 years. There is evidence that he was being paid wages throughout his service by the Management Bank. According to the learned Counsel for the Management, the workman was only a casual employee on daily wages and therefore he is not entitled to claim the benefits U/s 25F of Industrial Disputes Act. The learned Counsel for the workman argued that the nature of employment will not in any way affect his claim for reinstatement. The Hon'ble High Court of Kerala in **Sreekumar K. Vs Managing Director, KTDC Ltd**, 2019 1 KHC 225 held that the definition in Sec 2(s) of the ID Act includes casual employees also. The Hon'ble High Court held that

> " Para 18. From this it is quite evident that the definition of the term 'workman' U/s 2(s) of the Industrial Disputes Act includes a casual employee as well and hence the decision cited (Supra) (in the context govern by the provisions of Workmen's Compensation Act) is not at all attracted to the case in hand ".

As per Sec 2(k);

> " Industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

From the above definition, it is clear that a dispute between the employer and workman regarding non employment is an industrial dispute. The workman challenged the rejection of his application for absorption by the Management under the "Relaxed Segment Category" on the basis of the Tripartite Settlement in W.P.(C) no.15739/2014. While dismissing the writ petition vide judgment dt.23.06.2014 the Hon'ble High Court held that " The question whether his termination was valid or not or whether he is entitled to reliefs including the relief of reinstatement in service, are matters which should, in my opinion, be left to be decided by the competent authority under the Industrial Disputes Act, 1947". Hence the claim of the learned Counsel for the Management that there is no industrial dispute in the present case is not supported by the legal provisions.

9. The learned Counsel for the Management also argued that in view of the decision of the Hon'ble Supreme Court of India in **State of Karnataka Vs Uma Devi,** 2006 (4) SCC 1, in the absence of any statutory provision it is not possible to regularize the service of the workman. The learned Counsel for the workman pointed out that the law laid down by the Hon'ble Supreme Court in **Uma Devi**'s case (Supra) is not applicable to cases coming under the Industrial Disputes Act. The Hon'ble Supreme Court of India clarified the above position in **Maharashtra State Road Transport and another Vs Casteribe Rajaya Parivahan Karmachari Sanghatana**, 2009 8 SCC 556. The Hon'ble Supreme Court held that the application of Industrial Disputes Act is not at all considered by the Constitution Bench and therefore it was held that the dictum laid down by the Supreme Court is not applicable to cases coming under Industrial Disputes Act. In **Ajaypal Singh Vs Haryana Warehousing Corporation,** (2015) 6 Supreme Court Cases 321 the Hon'ble Supreme Court considered the decision in **Uma Devi's** case (Supra) and held that ;

> " 17. In Uma Devi's case, (3) this Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since rule of law is a core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. The provisions of the Industrial Disputes Act and powers of the Industrial and Labour Court provided therein were not at all under consideration in **Uma Devi's case** (3). The issue pertaining to unfair labour practice was neither the subject matter for decision nor was decided in **Uma Devi's case**.
>
> 18. We have noticed that Industrial Dispute Act is made for the settlement of industrial disputes and certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for long period without giving them the status and privilege of permanent employees.
>
> 19. Sec 25F of the Industrial Disputes Act, 1947 stipulates conditions precedent for retrenchment of workmen. A workman employed in any industry who has been in continuous service for not less than one year under an employer is entitled to benefit under the said provisions if the employer retrenches the workman. Such a workman cannot be retrenched until he/she is given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice apart from compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. It also mandates the employer to serve a notice in the prescribed manner on the appropriate Govt or such Authority as may be specified by appropriate Govt by notification in the

official Gazette. If any part of the provisions of Sec 25F is violated and the employer there by, resorts to unfair trade practice with the object to deprive the workman with privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 & 16 of the Constitution of India.

(20) - - - - - - - - - - -

(21) - - - - - - - - - - - - -

Para 22. It is always open to the employer to issue an order of "retrenchment" on the ground that the initial appointment of the workman was not in conformity with Article 14 & 16 of the Constitution of India or in accordance with rules. Even for retrenchment for such ground, unfair labour practice cannot be resorted to and thereby the workman cannot be retrenched on such ground without notice, pay and other benefits in terms of Sec 25F of the Industrial Disputes Act, 1947, if continued for more than 240 days in a calendar year".

The above decision was also quoted with approval by the Hon'ble Supreme Court in **Durgapur Casual Workers Union and others Vs Food Corporation of India and others**, (2015) 5 SCC 786. The Hon'ble Court held that an undertaking of the government which comes within the meaning of 'industry' or its establishment cannot justify its illegal action including unfair labour practice nor can ask for different treatment on the ground that public undertaking is guided by Articles 14 & 16 of Constitution of India and the private industries are not guided by 14 & 16 of the Constitution. In **Umrala Grama Panchayat Vs Secretary, Municipal Employees Union**, 2015(12) SCC 775 the Hon'ble Supreme Court directed that the services of the workmen in that case be regularized and made permanent since they worked for more than 240 days in a calendar year.

Taking into account all the facts and legal position as discussed above, I am of the considered view that the present industrial dispute is maintainable. Hence the issue is decided in favour of the workman and against the Management.

10. **Issue no.2**

According to the learned Counsel for the workman, the workman worked as a Sweeper in the Management Bank at Kozhikode Main Branch and Kozhikode Palayam Branch from 01/1990 to 12/2006. Subsequently he worked as a Peon-cum-Sweeper in Tirur Branch of the Management Bank continuously from 2007, since the opening of the Branch. The workman requested the Management vide his representation dt.26.11.2011 for absorption as a permanent employee. According to the learned Counsel for the workman, as a retaliation the Management Bank terminated the service of the workman orally w.e.f. 13.03.2012. According to the Counsel, his services were continuous and his service was terminated without following the requirements mandated U/s 25F of the Industrial Disputes Act. According to the learned Counsel for the Management, the Management never engaged the workman for doing any regular work and his services were utilized occasionally to clean the premises for which he was paid on daily wage basis. According to him, the workman never had the continuous service, as claimed by him. The learned Counsel for the workman pointed out that the Management produced relevant records before the Assistant Labour Commissioner, the Conciliation Officer and from the records produced, it can be seen that the workman had continuous service from 2007 to 13.03.2012 when his services were orally terminated.

11. As per Sec 25B

"1. a workman shall be said to be in continuous service for a period if he is for that period, in uninterrupted service including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal or a lockout or cessation of work which is not due to any fault on the part of the workman.

2. where a workman is not in continuous service within the meaning of clause 1 for a period of one year or 6 months, he shall be deemed to be in continuous service under the employer for a period of one year, if the workman during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

I. .....

II. 240 days in any other case"

Hence to get the benefit of continuous service U/s 25B of the Industrial Disputes Act, the workman ought to have worked with the Management for 240 days during the period of 12 calendar months preceding 13.03.2012. The workman produced Exbt.W2, copies of vouchers having received payment from 2007 to 2012. According to the learned Counsel for the workman, these are copies of vouchers produced before the Conciliation Officer at the time of conciliation process. The Management also produced Exbt.M2 series

of vouchers in original. Exbt.W2 contains copies of 213 vouchers whereas Exbt.M2 Series contains 191 vouchers having paid wages to the workman during the relevant period. Management witness, MW2 was specifically questioned on the issue during cross examination. He agreed that the Management could not produce all the cash vouchers since many of these vouchers are not traceable due to delay. The workman also produced a true copy of the Statement of Account ledger report of miscellaneous expenses of Union Bank of India, Tirur Branch for the period from 11.01.2007 to 27.02.2012 produced by the Management Bank before the Assistant Labour Commissioner, as Exbt.W1 in this proceedings. On a perusal of the above documents, it is clear that the workman worked with the Management Bank for more than 240 days during the period of 12 calendar months preceding his oral termination. The learned Counsel for the workman relied on the decision of the Hon'ble Supreme Court of India in **Director, Fisheries Terminal Division Vs Bhikubhai Meghajibhai Chavda**, 2010 KHC 6126 to argue that once the workman discharged his responsibility by producing the documents at his command, the burden shifts to the Management to prove that he has not worked for more than 240 days as required U/s 25B of the Act. In the above case the workman was a watchman who was paid daily wages and whose presence were marked in the Muster Roll. According to the Management, the workman worked from 1986 till 1988 and during this period the workman had worked for 93 days, 145 days and 31 days respectively. According to them the workman had not worked for more than 240 days in the preceding year. The Hon'ble Supreme Court relying on the decision in **R. M. Yellatty Vs Assistant Executive Engineer**, 2006 (1) SCC 106 held that

> " The respondent was a workman hired on daily wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the above documents, Muster Roll etc., in connection with his service. He came forward and deposed, so in our opinion the burden of proof shift to the employer/appellant to prove that he did not complete 240 days of service in the requisite period to constitute continuous service ".

12. In the present case also it is seen that the workman was examined as WW1 and he stated in his evidence that he worked with the Management from 1990 to 2012. However he could produce supporting documents for the year 2007-2012. The learned Counsel for the workman relied on the decision of **Gauri Shankar Vs State of Rajasthan**, 2015 (12) SCC 754. In the above case, the workman was working with the respondent and his case was that he was appointed against a permanent and sanctioned post w.e.f. 01/1990 till his services came to be retrenched and he had rendered service of more than 240 days in every calendar year and has received salary from the respondent department each month. The workman challenged the retrenchment as bad in law as the same is in violation of Sec 25F, 25G, 25H, 25T and 25U of the ID Act. The workman applied for production of the Muster Roll and the management failed to produce the relevant Muster Rolls. The Hon'ble Supreme Court relying on its earlier decisions in **Gopal Krishna G Ketker Vs Muhammed Haji Latheef,** AIR 1968 SC 1413 and **Murukesam Pillai Vs Manikyavasaka Pandara,** 1917 (5) LW 759 held that even if the burden of proof does lie on a party, the Court can draw an adverse inference if he withholds important documents in his possession which can throw light on the facts of issue. The learned Counsel for the workman also relied on the decision of the Hon'ble Supreme Court in **Sriram Industrial Enterprises Ltd Vs Mahak Singh and others**, 2007 (4) SCC 94, wherein the Hon'ble Supreme Court held that when the workman discharged their initial onus by producing the documents in their possession, it is the responsibility of the management to disprove the claim of the workman that he did not work for more than 240 days with the management one year immediately prior to his/her termination. In this case there is no dispute regarding the fact that the workman was engaged as a daily wager w.e.f. 01/1990. There is also no dispute with regard to the fact that his services were orally terminated w.e.f. 13.03.2012. The documents discussed above will substantiate the above points. The workman also produced evidence to show that he was paid wages against voucher from 03.02.2007 to 24.03.2012. He also entered the box and deposed that he worked with the Management continuously from 1990 to 2012. Hence it can safely be considered that the workman had discharged his responsibility of proving that he worked for more than 240 days in one year prior to his date of termination. In such circumstances as per the law laid down by the Hon'ble Supreme Court on the issue, it is possible to draw an inference that he worked for more than 240 days in view of the fact that the Management failed to produce any documents to disprove his claim that he worked continuously for more than 240 days in one year prior to the date of his termination.

Hence from the facts, evidence and law discussed above, it is concluded that the workman had rendered continuous service of 240 days making him eligible for the benefits U/s 25F of the Industrial Disputes Act.

13. The Management has no case that they followed the procedure prescribed U/s 25F of the Industrial Disputes Act while terminating the workman. Hence it is clear that the Management terminated the service of the workman in clear violation of the provisions of Sec 25F of Industrial Disputes Act.

14. The learned Counsel for the workman also argued that employees much junior in service to the workman are retained in service by the Management in violation of provisions of Sec 25G of the Industrial Disputes Act, 1947. According to the learned Counsel for the Management, there was a Memorandum of Settlement entered with the AIUBEA and the Management before Regional Labour Commissioner vide settlement dt.25.11.2013. The settlement

was only for relaxing the eligibility criteria for casual or temporary employees thereby bringing them under "Relaxed Segment Category" who had worked intermittently or continuously for atleast 360 days during the last 5 years from 01.12.2008 to 30.12.2013, including 30 days during the immediately preceding one year from 01.12.2012 to 30.12.2013. The application filed by the workman was rejected since he did not satisfy the relaxed eligibility criteria. The workman challenged the rejection before the Hon'ble High Court of Kerala in W.P.(C) no.15739/2014 and vide judgment dt.23.06.2014 the Hon'ble High Court dismissed the writ petition. The Hon'ble High Court held that the petitioner satisfies the requirement of 360 days service but he does not satisfy the stipulation that the workman should have 30 days service during the period from 01.12.2012 to 30.11.2013. According to the learned Counsel for the workman, he did not complete 30 days service during the period from 01.12.2012 to 30.11.2013 as his services were terminated on 13.03.2012. According to MW2, as per the Tripartite Settlement in Exbt.W5, 1165 daily wage employees were regularized and absorbed in the service of the Management Bank. Since the workman was not eligible to be considered under the relaxed scheme, it is not correct to say that the employees junior to him were retained by the Management in violation of Sec 25G of the Industrial Disputes Act. For the above reasons, it is also not possible to conclude that the Management employed fresh hands in their service for the very same work and job for which the workman was employed. There is no other evidence to support the claim of the workman. The workman also failed to establish that the Management adopted unfair labour practice prohibited U/s 25T of the Industrial Disputes Act, 1947.

15. Considering all the facts, pleadings and evidence in this case, I am inclined to hold that the retrenchment of the workman from the service of the Management is abinitio void and is in violation of Sec 25F of the Industrial Disputes Act.

16. **Issue no.3**

According to the learned Counsel for the Management, the workman was only a casual employee and was paid only for the days when he worked for the Management. It was also pointed out that he was not working against any permanent or perennial post in the Management. According to the learned Counsel for the workman, once this Tribunal found that the termination of the workman was illegal, he is entitled for reinstatement in service with full back wages. The learned Counsel for the Management pointed out that being a casual employee, the workman is not entitled for regularization considering the spirit of the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi** (Supra). The Hon'ble Supreme Court of India in **State of Uttarakhand and others Vs Rajkumar**, 2019 (1) LLJ 513 SC relying on its earlier decisions of **BSNL Vs Bhurumal,** 2014 (7) SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia**, 2018 (12) SCC 298 held that in the circumstances of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim for reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in **BSNL** case (Supra) as follows

> " Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, of unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.
>
> Para 34. The reasons for denying the relief for reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of nonpayment of retrenchment compensation and notice pay as mandatorily required U/s 25F of the ID Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated he has no right to seek regularization [see **State of Karnataka Vs Uma Devi**(3)]. Thus when he cannot claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation giving the relief of reinstatement, that too after a long gap, would not serve any purpose.
>
> **Para 35.** We would however, like to add a cavate here. There may be cases where termination of daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principles of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course

of grant of compensation instead of reinstatement. In such cases reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such relief can be denied "

The learned Counsel for the workman on the other hand relied on the decisions of the Hon'ble Supreme Court in **Jasmar Singh Vs State of Haryana and other**, 2015 4 SCC 458 and argued that the workman is entitled for reinstatement with full back wages since the order of termination was void abinitio. The Hon'ble Supreme Court in the above case relied on the following observation of the Court in **Deepali Gundu Surwase Vs Kranti Junior Adyapak Mahavidyalaya,** 2013 10 SCC 324 to hold that when the termination is found to be illegal, the workman is entitled for reinstatement with back wages.

" Para 22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from relatives and other aquittance to avoid starvation. These sufferings continued till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultravires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer was to deny back wages to the employee, or contesting his entitlement to get consequential benefits then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments".

In the above case, the Hon'ble Supreme Court was considering the case of a workman working as a daily paid worker in the office of Sub Divisional Officer (Karnal) for more than 240 days.

17. In the present case it is seen that the workman was engaged as a daily wage employee and he worked continuously for more than 240 days one year before his termination. Though the workman claimed unfair labour practice, the same is not proved. The Management has no case that the workman was gainfully engaged during the period of termination. Hence this is a fit case where the dictum laid down by the Hon'ble Supreme Court in **State of Uttarakhad Vs Raj Kumar** (Supra) is squarely applicable. It is seen that the workman was engaged on daily wage basis but paid on weekly basis. At present the workman is around 52 years of age. Hence it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim of reinstatement and other consequential benefits. It is seen that the workman was working on a daily wage for Rs.275/- when his services were terminated. Hence if the workman is reinstated in service with full back wages, he will be entitled for an approximate back wages of Rs.6,50,000/-. Considering the above facts, it is felt that interest of justice will be met if the Management is directed to pay a lumpsum monetary compensation of Rs.7,00,000/- to the workman in full and final settlement within one month from the date of notification of this award.

18. Hence an award is passed holding that the action of the Management in denying the demand of Union for the reinstatement with regularization of the workman is not correct and justified. The workman is entitled for a lumpsum monetary compensation of Rs.7,00,000/- in lieu of full and final settlement of all his claims.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 28th day of March, 2022.

APPENDIX

Witness for the Workman:-

WW1 - Sri.A. Manoharan., dt.13.07.2017

Witness for the Management:-

MW1 - Sri.RajagopalPai V. V., dt.04.10.2019

MW2 - Sri.N. Ajaya Kumar, dt.12.02.2020

Exhibits for the Workman:-

W1 - True copy of the statement of account Ledger report of

		miscellaneous expenses of Union Bank of India, Tirur Branch for the period from 11.01.2007 to 27.02.2012 produced by the Management
W2	-	`True copy of the debit vouchers for payment of cleaning/ sweeping daily wages paid to workman, daily wager from 20.01.2007 to 11.02.2012 by the Tirur Branch of the Management Bank
W3	-	True copy of the proceedings before Assistant Labour Commissioner(Central), Ernakulam from 08.12.2014 to 20.02.2015
W4	-	True copy of the Failure of Conciliation report dt.29.06.2015 byAssistant Labour Commissioner(Central), Ernakulam
W5	-	`True copy of the Memorandum of Tripartite Settlement dt.25.11.2013 between the Management and the Union

Exhibits for the Management:-

M1	-	True copy of the Judgement dt.23.06.2014 of the Hon'ble High Court of Kerala in W.P.(C) no.15739/2014
M2 series	-	True copy of the debit vouchers for payment of cleaning/ sweeping daily wages paid to workman, daily wager from03.02.2007 to 24.03.2012 by the Tirur Branch of the Management Bank

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्पोरेशन बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 24/2017) प्रकाशित करती है।

[सं. एल-39025/01/2022-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 26th September, 2022

S.O. 892.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.24/2017of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of Corporation Bank and their workmen.

[No. L-39025/01/2022 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Friday the 22nd day of April 2022, 2 Vaisakha 1944)

ID No.24/2017

Workman : Sobhanakumari N.C.
Nadayil Padinjarethil

Vanmuzhi
Pandanad
Chengannur – 689506
By Adv.Ashok B. Shenoy

Management : The Deputy General Manager
Corporation Bank
Zonal Office, Apoorva Chambers
TC 14/2143(2)
Sunny Meads Lane, Palayam
Trivandrum – 695304

By Adv.Bobby John Pulickaparambil

This case coming up for final hearing on 06.10.2021 and this Industrial Tribunal-cum-Labour Court on 22.04.2022 passed the following:

AWARD

1. This is an application filed U/s 2A (2) of Industrial Disputes Act, 1947.

2. The worker joined the service of the Management Bank as a temporary Peon at their Chengannur Branch in November 1999. Thereafter she was elevated as permanent Peon on 09.04.2014 and retained at Chengannur Branch and confirmed in service on 10.10.2014. Ever since she joined the service of the Management Bank, the worker was discharging her duty diligently and with devotion. While so the worker was placed under suspension on 22.01.2016, pending further investigation alleging misappropriation of funds deposited by a corporate customer. Four months after placing the worker under suspension, she was issued with a charge sheet dt.03.06.2016 alleging that the worker had failed to entrust the cash collected from a corporate customer of the Management Bank on 02.01.2016. The worker was charged to have committed grave misconduct under Clauses 5(d), 5(j) of the Memorandum of Settlement on Disciplinary Action Procedure dt.10.04.2002 and also minor misconduct under Clause 7(d) of the Memorandum of Settlement. A disciplinary enquiry into the charges levelled against the worker was ordered to be conducted by appointing a Senior Manager of Zonal Office of the Management Bank as the Enquiry Officer. Without conducting a due enquiry and without taking any evidence, the Enquiry Officer submitted a report dt.01.10.2016 finding that the charges against the worker have been proved on the premise that the worker gave a letter to the Enquiry Officer admitting the alleged charges. The Disciplinary Authority accepted the findings of the Enquiry Officer without affording the worker an opportunity to make her submissions on the enquiry report. By the same proceedings dt.21.11.2016 punishment of removal from service as per terms of Clause 6(b) of the Memorandum of Settlement was also proposed to be imposed on the worker. The worker was afforded a personal hearing on the proposed punishment. The worker appeared before the Disciplinary Authority and explained her position regarding the alleged misconduct on her part. Without considering her representation, the Disciplinary Authority vide proceedings dt.28.12.2016 confirmed the punishment of removal from service of the worker. The industrial dispute raised by the worker before the Regional Labour Commissioner(Central) ended in failure on 23.06.2017. The worker is innocent of the alleged charges against her. She is framed and victimized at the hands of the Manager and other employees of Chengannur branch of the Management Bank. The Enquiry Officer and the Presenting Officer took advantage of the illiterate background of the worker. The disciplinary action was initiated with a pre-conceived assumption that the worker had committed the alleged misconducts, thereby rendering the impugned punishment vitiated by bias. The impugned punishment is illegal and bad for it is imposed in violation of the Bipartite Settlement. The charges and process of misconduct are patently vague and lacking in material particulars. The enquiry was conducted in complete violation of principles of natural justice depriving the worker due opportunity of defence and causing grave prejudice to her. No enquiry worth the name was conducted and the purported enquiry proceedings were conducted in total violation of the principles of natural justice and also the provisions of the Bipartite Settlement. The enquiry proceedings were totally biased and partisan and were recorded behind the workers back. The enquiry was held in English, a language not known or understood by the worker. The worker was made to write and sign a letter as dictated by the Enquiry Officer and Presenting Officer without knowing the consequence of such letter. Evidence was also taken in English. The enquiry proceedings were held on the basis of documents, letters and materials issued in English without affording the worker a translation in Malayalam or letting her to know its contents. Even the charges were not read out to her or made known to her in Malayalam. She was also not informed her right to be represented by a defence representative in the enquiry. The original document was not made available to the worker for inspection. The worker was not allowed to examine her witness or produce any documents in proof of her innocence. The Enquiry Officer and Presenting Officer dictated a letter of admission and got it signed by her and abruptly closed the enquiry. The worker was not allowed the cross examination of witness against her or meet the evidence against her. The entire proceedings were conducted in English and the worker was totally crippled and handicapped from defending the charges. Though the worker was pleading innocence, she was pacified stating that

her interest will be protected. She came to know about the intention of the Management only when she received the proposed punishment to remove her from service. Hence the entire enquiry conducted against her is illegal and vitiated. The finding of guilt on the alleged charges entered against the worker are erroneous, perverse, biased and against facts, circumstances and evidence on record. There is no evidence on record to prove the alleged charges against her. The purported admission of charges by the worker is vitiated by fraud and misrepresentation as also undue influence purported on her by the Enquiry Officer and the Presenting Officer. The worker is totally innocent of the alleged charges. The punishment imposed on the worker is ultra-vires and illegal for no act of "gross misconduct" has been proved against the worker.

3. The Management filed written statement denying the allegations in the claim petition. The punishment of removal from service awarded to the worker by the Management is on a finding by a properly conducted enquiry and the findings thereof on the basis of the confession of the worker that she misappropriated an amount of Rs.2,30,931/- from the Bank. The enquiry was conducted in a proper and legal manner. The worker was working as a Peon at the Chengannur branch of the Management Bank from 09.04.2014 to 22.01.2016. On 02.01.2016, the worker committed a serious offence of theft of public money from the Bank and thereby caused serious threat on the trust and goodwill of the Bank which is the custodian of public money. On 02.01.2016 the Assistant Manager of the Management Bank escorted by the worker collected Rs.2,30,931/- from LIC of India, Mannar branch and was brought to Chengannur branch of the management Bank and was handed over to the cashier. The cashier kept the cash box outside the cabin as he was otherwise busy. Hence the credit slip was not accounted on 02.01.2016. On 04.01.2016 the worker noticed the cash box outside the cash cabin and took the entire cash from the suitcase and destroyed the LIC credit challan. Inspite of search by the employees, the cash and credit challan could not be located. On 06.01.2016 the worker confessed and admitted in writing that the cash was taken away by her. She also admitted that an amount of Rs.36,700/- was utilized by her and returned the balance amount of Rs.1,94,231/-. The Management through Assistant General Manager conducted the preliminary investigation, and during the investigation the worker submitted a statement admitting the theft and misappropriation. On 12.01.2016 the Assistant General Manager submitted his preliminary investigation report which pointed out that the matter is of serious nature involving moral turpitude, wilful damage and attempt to cause damage to the property of the Bank. The worker was suspended vide order dt.21.01.2016 on the basis of the investigation report. On 03.06.2018 charge sheet was issued to the worker by the disciplinary authority to submit her explanation to the charges levelled against her within 10 days of its receipt. No explanation was offered by the worker. Hence a domestic enquiry was ordered on 04.08.2016. The Enquiry Officer conducted a preliminary enquiry on 19.09.2016. The worker appeared and admitted all the charges levelled against her unequivocally and submitted a letter to that effect. Since the worker pleaded guilty of all the charges, the Enquiry Officer did not find it necessary to hold further enquiry in the matter and submitted her report dt.01.10.2016, holding that the charges levelled against the worker is proved. The charge of theft and misappropriation proved against the worker are of serious nature as the Bank is holding public money in its fiduciary capacity. Thus the order of removal passed by the Disciplinary Authority vide order dt.29.12.2016 is fit and proper in the facts and circumstances of the case and proportionate to the gravity of offence proved against her. The Management Bank denied the allegation of the worker that she was victimized at the hands of Manager and other employees of the Branch and also the Enquiry Officer and the Presenting Officer.

4. The worker filed a replication reiterating the averments in the claim petition.

5. On conclusion of the pleadings, the Management examined the Enquiry Officer as MW1 and Presenting Officer as MW2 and marked Exbts.M1 to M4. Exbt.M4 is the disciplinary enquiry file. The worker did not adduce any evidence.

6. The issues to be decided in this industrial dispute are;

1. Whether the disciplinary enquiry is conducted in a fair and proper manner following the principles of natural justice?
2. Whether the finding by the Enquiry Officer and Disciplinary Authority is based on legal evidence ?
3. Whether the punishment imposed is proportionate to the charges proved against the worker?
4. Relief and cost?

7. Issue no.1

On the request of the Counsels, the issue whether the disciplinary enquiry was conducted in a fair and proper manner following the principles of natural justice was taken up as a preliminary issue. After hearing the learned Counsels on either side elaborately, this Tribunal vide its order dt.22.02.2021 found that the disciplinary enquiry was conducted in a fair and proper manner following the principles of natural justice.

8. Issue no.2

The worker was working as a Peon at Chengannur Branch of the Management Bank. On 02.01.2016 the Assistant Manager of the Bank escorted by the worker collected Rs.2,30,931/- from LIC of India, Munnar Branch

and was brought to the Chengannur Branch and was handed over to the Cashier. The Cashier kept the cash box outside the cabin. On 04.01.2016, the worker noticed the cash box outside the cabin and took the entire cash from the suitcase. On 06.01.2016 the worker confessed and admitted in writing that the cash was taken away by her. She returned an amount of Rs.1,94,231/- admitting that she had spend an amount of Rs.36,700/- for some purpose. During the investigation by the Assistant Manager, the worker admitted in writing that she had taken the money. On 03.06.2018 a charge sheet was issued to the worker alleging the following commission and omission on the part of the worker.

i. Causing willful damage or attempt to cause damage to the property of the Bank

ii. Doing acts prejudicial to the interest of the Bank amounting to gross misconduct under clause 5(d) and 5(j) of Memorandum of Settlement on Disciplinary Action Procedure dt.10.4.2002 and

iii. Breaching of any rule or instructions for the running any department being a minor misconduct U/s 7(d) of the Memorandum of Settlement on Disciplinary Action Procedure dt.10.04.2002, besides involving moral turpitude.

The worker did not offer any explanation. Hence a disciplinary enquiry was ordered on 04.08.2016. The Enquiry Officer conducted a preliminary enquiry on 19.09.2016. The worker appeared and admitted all the charges levelled against her and submitted a letter to that effect. Since the worker pleaded guilty of all the charges, the Enquiry Officer did not find it necessary to hold further enquiry and submitted the report on 01.10.2016, holding that the charges levelled against the worker is proved.

9. The Enquiry Officer vide her proceedings dt.19.09.2016 initiated the disciplinary enquiry and during the proceedings the worker was directed to clarify whether she has received the charge sheet and whether she is pleading guilty of charges or propose to file any defence. The worker replied that she received the charge sheet and she is pleading guilty of the charges levelled against her and do not claim to make any defence. She also gave a letter to the Enquiry Officer dt.19.09.2016 admitting the charges unconditionally and unequivocally. In view of the above, the Enquiry Officer felt that there is no point in proceeding with the enquiry and submitted her report to the Disciplinary Authority vide her report dt.01.10.2016 holding that the charges against the worker is proved. According to the learned Counsel for the worker, the confession/admission by the worker is on the basis of threat and coercion by the Management. However it is seen that the worker admitted the crime to the Bank Manager vide her letter dt.06.01.2016 and before the Investigation Officer vide her letter dt.11.01.2016. She also returned an amount of Rs.1,94,231/- to the Manager on 06.01.2016 and the balance amount was paid closing her RD account and by borrowing from one of the Bank employee. Hence it is difficult to accept the pleading of the learned Counsel for the worker that the Exbt.M3 confession letter given by the worker to the Enquiry Officer dt.19.09.2016 is by threat and coercion of the officers of the Management. In **Union Bank of India Vs Babu Mahadevappa Andani**, 2007 (4) Kar L J 717 the Hon'ble High Court of Karnataka in an identical factual situation held that in view of the unequivocal admission of charges by the worker and confession letters and also the fact that the charged official had repaid a portion of the misappropriated amount, there was no need for the Enquiring Officer to proceed with further enquiry. Further the Hon'ble Supreme Court of India in **Central Bank of India Ltd Vs Karunamoy Banerjee**, 1967 2 LLJ 739 SC held that " If the workman admits his guilt, to insist upon the Management to let in evidence about the allegations, will, in our opinion, only be an empty formality". In view of the fact that the worker had unambiguously and unconditionally admitted the misappropriation and returned a part of the money would clearly establish the fact that there is a clear admission of guilt.

Hence the finding in the disciplinary enquiry is based on the unambiguous admission by the worker in writing before the Enquiry Officer. Hence the issue is decided in favour of the Management and against the worker.

10. Issue no.3 & 4

According to the learned Counsel for the worker, the punishment of dismissal imposed on the worker is too harsh and disproportionate to the charges alleged against her. The learned Counsel for the Management on the other side pointed out that an official of the Bank who is dealing with public money is supposed to act with honesty and integrity. Any misconduct alleged and proved against a Bank employee with regard to dishonesty is to be viewed very seriously. According to him, the Management lost confidence in the worker and therefore the punishment imposed on the worker by the Management is proportionate to the charges proved against her. In **Standard Chartered Bank Vs R. C. Srivastava**, Civil Appeal no.6092/2021 the Hon'ble Supreme Court considered the limit of the Industrial Tribunals to interfere with the punishment imposed by the Disciplinary Authority. In the above case, the Disciplinary Authority after analyzing the evidence on record imposed a penalty of dismissal from the service of the workman. The Tribunal set aside the order of dismissal from service and directed the Management to reinstate the respondent workman in service with back wages. The Hon'ble High Court dismissed the writ petition filed under Article 226 of the Constitution. The Hon'ble Supreme Court after analyzing the facts of the case held that " The decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the decision of the

Management on ipse dixit. Its jurisdiction U/s 11A of the Act, 1947 although is a wide one but it must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinize or analyze the evidence but what is important is how it does so". In the present case the worker is a Bank employee. As already pointed out, there is clear admission by the worker that she misappropriated the money and also returned a part of the same. The law in this regard is settled by various decisions of the Hon'ble Supreme Court of India. In **Chairman and Managing Director, United Commercial Bank Vs P. C. Kakkar**, 2003 4 SCC 364 the Hon'ble Supreme Court held that

> "Para 14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and customers. Every officer/employee of the Bank is required to take all possible steps to protect the interest of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank "

In **Regional Manager U.P.S.R.T.C.Vs Hoti Lal and another**, 2003 3 SCC 605 the Hon'ble Supreme Court held that " If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is a must and unexceptionable ". In a recent decision **Union of India and others Vs M. Duraisamy**, AIR 2022 SC 2002 the Hon'ble Supreme Court examined whether the removal from service of employee on a proved misconduct of serious nature of defrauding public money is required to be interfered by the higher Courts. The Hon'ble Supreme Court after examining all the previous authorities held that " Once a conscious decision was taken by the Disciplinary Authority to remove an employee on the proved misconduct of a very serious nature of defrauding public money, neither the Tribunal nor the High Court should have interfered with the order of punishment imposed by the Disciplinary Authority, which was after considering the gravity and seriousness of the misconduct ". In another recent decision, **State Bank of India Vs K. S. Vishwanath**, AIR 2022 SC 2531 the Hon'ble Supreme Court examined its earlier decisions on the issue and held that "It is further observed that if there is some evidence, that the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition under Article 226 of the Constitution of India to review/re-appreciate the evidence and to arrive at an independent finding on the evidence ".

11. In this case it is already found that the Enquiry Officer conducted the enquiry in a fair and proper manner following the principles of natural justice. It is also found that the finding of the Enquiry Officer and the Disciplinary Authority are based on unconditional and unequivocal admission by the worker. There is no perversity in the findings by the Enquiry Officer as well as the Disciplinary Authority. In the present case the worker is found to be guilty of stealing and misappropriating an amount of Rs.2,30,931/-. She confessed to the crime and returned a part of the amount to the Bank. Loss of confidence of the Management against an employee is a primary fact in such cases. There is nothing wrong in the Bank losing confidence or faith in such employees. The proved charges of theft and misappropriation on the part of the worker are of serious nature as the Bank is holding public money in fiduciary capacity.

The order of removal from the service of the Management Bank issued by the Disciplinary Authority on 29.12.2016 is proportionate to the gravity of the charges proved against the worker. Hence the issue is decided in favour of the Management and against the worker.

12. It is found that the disciplinary enquiry was conducted in a fair and proper manner, there is no perversity in the finding of the Enquiry Officer and also the Disciplinary Authority and that the punishment of dismissal imposed on the worker is proportionate to the charges proved against her.

Hence the claim of the worker to reinstate her in the service of the Bank with full back wages, continuity of service and other consequential benefits cannot be accepted and the same is rejected.

13. Hence an award is passed holding that the disciplinary enquiry against the worker was conducted in a fair and proper manner and also there is no perversity in the finding of the Enquiry Officer and also the Disciplinary Authority. The punishment of removal from service imposed on the worker is proportionate to the charges proved against her. Hence the claim of the worker for reinstatement in service of the Management Bank with consequential benefits is not sustainable and therefore rejected.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 22nd day of April, 2022.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:- Nil

Witness for the Management:-

MW1	-	Smt.Rachel Sunny, dt.04.11.2019
MW2	-	Smt.Priyaranjini A., dt.13.02.2020

Exhibits for the Workman:- Nil

Exhibits for the Management:-

M1	-	True copy of list of documents through which the Management proposed to substantiate the charges levelled against the worker
M2	-	True copy of the list of witnesses through which the Management proposed to substantiate the charges levelled against the worker
M3	-	True copy of letter dt.19.09.2016 from the worker to the Enquiry Officer
M4	-	Disciplinary Enquiry File

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 893.—औघोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेर्सस सिंडिकेट बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण–सह–श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 43/2020) प्रकाशित करती है।

[सं. एल-12011/38/2020-आई आर (बी-II)]

राजेन्द्र सिंह, **अवर सचिव**

New Delhi, the 19th September, 2022

S.O. 893.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.43/2020of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of M/.s. Syndicate Bank and their workmen.

[F. No. L-12011/38/2020 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Wednesday the 27th day of July 2022, 5 Sravana 1944)

ID No. 43/2020

Workman/Union : The Vice President
Syndicate Bank Staff Association(Regd)
49/746 'Krishna', Karama Road
Elamakkara Kochi - 682026

Managements : 1. The Deputy General Manager
M/s.Syndicate Bank
Regional Office
1st Floor, Pioneer Tower

Shanmugham Road
Ernakulam – 682031

2. The General Manager
M/s.Syndicate Bank
Personal Department
Head Office, Manipal
Karnataka – 576104

By Adv.R. S. Kalkura

This case coming up for final hearing on 27.07.2022 and the same day this Industrial Tribunal-cum-Labour Court passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/38/2020-IR(B-II) dated 25.11.2020 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

" Whether the demand of Syndicate Bank Staff Association to regularize the service of Smt.Girija Suresh, temporary Part Time Sweeper of Syndicate Bank is justified or not? If justified, to what relief the worker is entitled to ?"

3. After receipt of the order of reference from Govt of India, summons dt.28.12.2020 was issued to the parties concerned. The matter was posted for appearance of the parties on 17.02.2021. The summons was acknowledged by the parties concerned. Thereafter the matter was posted on 23.08.2021, 11.10.2021, 06.01.2022, 30.03.2022 and 27.07.2022. Though the summons was acknowledged by the parties, there was no representation from the side of the Union and no claim statement is filed even after more than one year. The Management entered appearance on 27.07.2022.

4. It is felt that the Union is not interested in pursuing the industrial dispute.

5. Hence a 'no dispute award' is passed holding that there is no merit in the claim of the Union.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 27th day of July, 2022.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 37/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2022 को प्राप्त हुआ था।

[सं. एल-22012/207/2004-आई. आर. (सी एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 26th September, 2022

S.O. 894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2005) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on 26/09/2022.

[No. L-22012/207/2004 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/37/2005

Present: P.K.Srivastava H.J.S..(Retd)

The Secretary
Snayukt Koyla Mazdor Sangh(AITUC)
C/o Sanjay Mishra, Telephone Exchange
PO:Kotma Colliery,
Shahdol(M.P.) ...Workman

Versus

The Chief General manager,
Jamuna & Kotma Area of SECL
PO-Jamuna
Shahdol(M.P.) ...Management

AWARD

(Passed on 6-9-2022.)

As per letter dated 13/5/2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/207/2004IR(CM-II). The dispute under reference relates to:

> "***Whether the action of the Chief General manager, Kotma Area of SECl in superannuating Sh. Laxman Prasad and Sh. Mahipal Kishore W.e.f. 10-2-2004 and 20-1-2005 respectively is legal and justified? if not, to what relief the workmen and entitled ?*** ."

1. In this reference, dispute regarding two workman Laxman Prasad Shukla and Mahipal Kishore is involved. Both these workman filed their separate statement of claims.

2. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claims/defence.

3. According to the workman Laxman Prasad Shukla he was serving with the South Eastern Coal Limited as clerk . His date of birth is 30-8-1947. He was due for superannuation after attaining 60 years of age on 31-8-2007 but has been wrongly superannuated by Management w.e.f. 29-2-2004 treating his date of birth as 10-2-1944. The management had entered his date of birth in form-B as 10-2-1944 without any basis inspite of the fact that the workman had produced his educational certificate before Management showing his date of birth as 30-8-1947. The Management corrected his date of birth in its record in the year 1987, when he disputed the date of birth maintained by management in its record and his correct date of birth 30-8-1947 was mentioned in its record by management. Even then Management issued him notice of superannuation w.e.f. 29-2-2004 treating his date of birth as 10-2-1944 which is illegal and discriminatory on the part of the Management. Accordingly the workman has prayed that declaring the action of Management superannuating the workman Laxman Prasad Shukla w.e.f 29-2-2004 be held against law and the workman be held entitled to be reinstatement with all back wages and benefits pre and post retiral treating his date of birth as 30-8-1947.

4. Mahipal Kishore, the other workman has stated that his actual date of birth is 16-1-1951. He had produced certificates regarding this at the time of the first appointment before the Management but the Management had wrongly entered his date of birth as 20-1-1945 without any basis and superannuated him on the basis of his date of birth 20-1-1945 after attaining 60 years on this wrong entry regarding his date of birth whereas he had right to continue in service till 31-1-2011 on attaining 60 years on the basis of his correct date of birth which is 16-1-1951. He made several representation before the Management to correct his date of birth which was not heard. Then he raised dispute and accordingly he has prayed that holding the action of Management in superannuating the workman Mahipal Kishore on 31-1-2005 based on his wrong date of birth 20-1-1945 is against law. The workman be held entitled to be reinstated with back wages and pre as well as post retirement benefits and also be held to continue in service up to 60 years on the basis of his correct date of birth 16-1-1951.

5. The Management has filed a joint written statement of defense wherein it has taken a case that the workman Laxman Prasad Shukla was initially appointed on 10-2-1971. As per various statutory records maintained by management, his age was recorded as 28 years on the date of his first appointment i.e. on 10-2-1972. Accordingly, his date of birth 10-2-1944 was recorded in Form-B register prepared under Mines Act. This register is the personal bio date of the workman prepared on the basis of the information furnished by the workman and signed by the workman as a proof of Authentication. Subsequently when Union raised certain issues regarding correction of date of

birth of certain employees in JBCCI, the Management circulated a general notice with extract of service record and invited objection from workman, if there was any inaccuracy in any entry in the service records. The notice and service record of the workman, including the workman Laxman Prasad Shukla were displayed on the notice board showing his date of birth as 10-2-1945. He did not submit any objection at that time. He was initially appointed as a Clerk. He signed form-B prepared by the Management at the time of his first appointment in English as a token of acceptance of entries made there in. The workman never submitted any document regarding his date of birth as required in I.I.No.37/76 in this respect, hence he cannot be permitted to raise dispute at the fag end of service.

6. As regards the workman Mahipal Kishore, the case of management is that he was first appointed as electrician on 1-6-1970. His age maintained in form-B register at the time of his first date of joining was 32 years as on 26-1-1977. He signed the Form-B register without disputing the entry regarding his age and date of birth. As a proof of its authentication service register was prepared on the basis of Form-B register containing the same date of birth i.e. 20-1-1945 mentioned in form-B register. The workman never disputed his date of birth at any point of time. The service excerpts of every workman was circulated in 1987 and the workman were directed to raise objection if they feel that any entry in their service record is inaccurate. The workman never raised any dispute in the year 1987 also. The case of the workman along with other employees were referred to Age Determination Committee. The workman did not submit any document as provided in I.I.No.76 relating to his date of birth before the Age Determination Committee, hence the Age Determination Committee also concluded the same date of birth 20-1-1945, hence he cannot be permitted to raise dispute at the fag end of his service. Accordingly the Management has prayed that the reference be answered against these two workman.

7. Both the workman have filed separate rejoinder, wherein they have mainly reiterated their case.

8. The workman Mahipal Kishore filed his affidavit as his Examination in Chief. As a witness he was cross-examined by management. The workman Laxman Prasad Shukla also filed his affidavit as his Examination in Chief. He was also cross-examined by the management. Witness Jaibeer Sahu and Ramsharan Sharma has been examined as witness by these two workman. The management has examined S.K.Pandey , Deputy Manger Personnel who has been cross-examined by the workman.

9. The Management has proved Exhibit M1 service excerpts of workman Mahipal Kishore and Exhibit M-2 retirement notice of workman Mahipal Kishore. The Management has further proved Exhibit M-3 and M-4 photocopies of two Form-B of workman Laxman Prasad Shukla and Exhibit M-6 and M-7 photocopies of two Form-B of workman Mahipal Kishore.

10. The workman Laxman Prasad Shukla has also filed his duplicate mark sheet in Higher Secondary Examination 1967. His Transfer Certificate dated 31-3-2003 both in original and copy of school register of High School attested by the Principal.

11. I have heard arguments of Mr. R.K.Soni , learned counsel appearing for workman and Shri A.K.Shashi, learned counsel for the management. I have also perused the record.

(1) Whether the two workman Laxman Prasad Shukla and Mahipal Kishore have successfully proved their date of birth as 30-8-1947 and 16-1-1951?

(2) Whether the action of the Management in superannuating these two workman treating their date of birth as 10-2-1944 and 20-1-1945 respectively, is against law?

(3) Relief if any to which these two workmen are entitled?

The case of the two workman and the Management on this issue has been detailed earlier. As regards the workman Mahipal Kishore, he has corroborated his case with an affidavit as Examination in Chief. He has stated that he has filed copy of his Transfer Certificate from the school where he completed his primary education as document 'A'. According to this document, it was prepared on 22-12-1985 i.e. much after the date of his joining with the Management. According to this document, he cleared his primary education in the year 1963. His date of birth is mentioned as 16-1-1951 in this document. Document 'B' is an application to the District Education Officer for copy of his Class-Vth mark sheet. Document 'C' and 'D' filed and referred to by this workman in his affidavit disclosed that records regarding the relevant year information of which has been served is not available with the department. He states in his cross-examination that at the time of his joining on 1-6-1970 he has deposited copy of his transfer certificate with the Management. Document 'A' is the duplicate copy of his transfer certificate. He admits that in his representations regarding correction of his date of birth filed to management, he never mentioned this fact that he had submitted his original mark sheet and transfer certificate at the time of his first joining.

14. His this statement, coupled with the fact that the Document 'A' is photocopy of duplicate Transfer Certificate, makes his statement on this point, suspicious. The management has stated that no such document was produced by this workman before the Age Determination Committee. The Report of the Age Determination Committee has been filed by the Management. This conduct of the workman Mahipal Kishore further militates against his statement that he did file his Transfer Certificate and mark sheet in original before the Management at the

time of his first joining and that the duplicate transfer certificate Document 'A' which he has referred, which was prepared in the year 1985 was in fact available with him. Hence now remains only statement of the workman Mahipal Kishore on oath in support of his claim that his actual date of birth is 16-1-1951 which is supported by his witness Jaibeer Sahu who is a Co-Villager and Co-workman. This witness also states that he has studied in the same year with workman Mahipal Kishore but there seems no occasion for him to know about the date of birth of Mahipal Kishore, hence evidence of the workman Jaibeer Sahu also cannot be relied. Accordingly, it is held that the workman Mahipal Kishore could not prove his date of birth 16-1-1951 as claimed by him. He further could not prove that his date of birth recorded in his service record as well as determined by the Age Determination Committee according to I.I.No.76 is incorrect from the evidence produced by him on this point.

15. As regards the claim of the workman Laxman Prasad Shukla, apart from his statement on oath and cross-examination as well as statement of co-worker Ram Sharan Sharma who also happens to be the Co-Villager of workman Laxman Prasad Shukla, there is on record original mark sheet of the workman Laxman Prasad Shukla son of Uma Duth Shukla for the year 1967 i.e. 1966-67 bearing Roll No.084094 issued from the Board of Secondary Education Madhya Pradesh, Bhopal showing his date of birth as 13-8-1947. According to this mark sheet , he failed in every subject in his High Secondary School certificate examination.

16. There is on record another document attested copy of the Scholar of the High School attended by this workman Laxman Prasad Shukla, wherein his date of birth 13-8-1947 has been recorded. According to this Scholar register he failed in Class-Xth i.e. Higher Secondary in the year 1966-67. There is another document on record which is transfer certificate issued by the Principal of this School stating that the workman failed in Class-XIth in the year 1968. According to this certificate, he attended the Government School Ucchatar Madhyamik Vidyalaya , Kotma District Shahdol from 6-7-1959 to 17-9-1968. Whereas according to the Scholar register, he remained in the school mentioned above from 6-7-1959 to 1967, these two documents militates against each other. Hence they are held not completely reliable. Consequently the marksheet filed also cannot be held completely reliable.

17. In this light of the above discussion, it is held that the workman Laxman Prasad Shukla and Mahipal Kishore could not successfully prove that there correct date of birth was 30-8-1947 and 16-1-1951 respectively. **Issue No.1 is answered accordingly**.

18. ISSUE NO.2:-

In the light of the findings recorded in Issue No.1, the Issue No.2 is decided against the workman. **Issue No.2 is answered accordingly.**

19. ISSUE NO.3:-

In the light of the finds recorded in Issue No.1, the workman is held entitled to no relief and accordingly **Issue No.3 is answered against the workman.**

20. On the basis of the above discussion, following award is passed:-

A. The action of the *Chief General Manager, Kotma Area of SECl in superannuating Sh. Laxman Prasad and Sh. Mahipal Kishore W.e.f. 10-2-2004 and 20-1-2005 respectively is hel to be legal and justified.*

B. The workman is held entitled to no relief.

C. No order as to costs.

21. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 6-9-2022

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 895.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेर्सस सिंडिकेट बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 42/2020) प्रकाशित करती है।

[सं. एल -12011/39/2020-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 26th September, 2022

S.O. 895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.42/2020) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of M/.s. Syndicate Bank and their workmen.

[No. L-12011/39/2020 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Wednesday the 27th day of July 2022, 5 Sravana 1944)

ID No. 42/2020

Workman/Union : The Vice President
Syndicate Bank Staff Association(Regd)
49/746 'Krishna', Karama Road
Elamakkara
Kochi - 682026

Managements : 1. The Deputy General Manager
M/s.Syndicate Bank
Regional Office
1st Floor, Pioneer Tower
Shanmugham Road
Ernakulam - 682031

2. The General Manager
M/s.Syndicate Bank
Personal Department
Head Office, Manipal
Karnataka – 576104

By Adv.R. S. Kalkura

This case coming up for final hearing on 27.07.2022 and the same day this Industrial Tribunal-cum-Labour Court passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/39/2020-IR(B-II) dated 25.11.2020 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

" Whether the demand of Syndicate Bank Staff Association to regularize the service of Smt.Shiny Peter, temporary Part Time Sweeper of Syndicate Bank is justified or not? If justified, to what relief the worker is entitled to?"

3. After receipt of the order of reference from Govt of India, summons dt.28.12.2020 was issued to the parties concerned. The matter was posted for appearance of the parties on 17.02.2021. The summons was acknowledged by the parties concerned. Thereafter the matter was posted on 23.08.2021, 11.10.2021, 06.01.2022, 30.03.2022 and 27.07.2022. Though the summons was acknowledged by the parties, there was no representation from the side of the Union and no claim statement is filed even after more than one year. The Management entered appearance on 27.07.2022.

4. It is felt that the Union is not interested in pursuing the industrial dispute.

5. Hence a 'no dispute award' is passed holding that there is no merit in the claim of the Union.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 27th day of July, 2022.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2022

का.आ. 896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 59/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2022 को प्राप्त हुआ था।

[सं. एल-22012/65/2018-आई. आर. (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 19th September, 2022

S.O. 896.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2018) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on *26/09/2022*

[No. L-22012/65/2018 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/2018

Present: P.K.Srivastava H.J.S..(Retd)

The President
Coal India Pensioner Association,
Branch Bishrampur Area,
Qtr No.1B-32,
Bishrampur District Surajpur(CG)-497226 ...Workman

Versus

The General Manager
SECL Bishrampur Area
PO-Bisharampur Colliery District
Surajpur(CG) ...Management

AWARD

(Passed on 9-9-2022.)

As per letter dated 13/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/65/2018-IR(CM-II). The dispute under reference relates to:

> "**Whether the action on the part of General Manager, SECL Bishrampur area in withholding the terminal benefits viz. leave encashment, settling allowance, annual bonus for the year 2009-10 and other dues if any as per the eligibility after retirement on unauthroised quarter retention ground by deviating the company rule by Shri Surendra Tiwari, Ex-SR, PCSA of Bishrampur is just and fair?If not, what relief the above names ex-employee Shri Surendra Tiwari is entitled to? .**"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The workman never appeared before the Tribunal inspite of service, hence the case was ordered to proceed ex-parte against the workman vide order dated 5-10-2021. The Management has filed its written statement and affidavit of its witnesses which is uncross-examined. The Management has also proved two documents Exhibit M-1 and Exhibit M-2.

3. According to the management, the workman has retired now. His retiral benefits have not been paid due to non-submission of no dues certificate. He was allotted residential quarter No.!B/47 while in service. He is not entitled to occupy the alleged accommodation after his superannuation. He retired from service on 30-6-2010, whereas the present dispute was raised in the year 2016 but eviction order has already been passed against the workman regarding eviction of the said accommodation and the said accommodation has been allotted to another workman. Accordingly, the Management has prayed that the reference be answered against the workman.

4. The Reference is the point in issue in the case in hand.

5. Inspite of giving several opportunities, the workman has not filed the statement of claim in support of his claim and nor was he present at the time of argument.

6. On perusal of record, in the light of the arguments of Mrs. A.K.Shashi, Learned counsel for the Management, it comes out that due to non-submission of no dues certificate, the dues of the workman are still not paid .

7. The workman Surendra Tiwari had superannuated on 30-6-2010 and till date he has not vacated the accommodation which is in violation of rules and thus his retiral benefits have been withheld due to non-submission of his no dues certificate. Accordingly, for illegally occupying the accommodation, the reference is required to be answered against the workman.

8. On the basis of the above discussion, following award is passed:-

A. The action on the part of General Manager, SECL Bishrampur area in withholding the terminal benefits viz. leave encashment, settling allowance, annual bonus for the year 2009-10 and other dues if any as per the eligibility after retirement on unauthroised quarter retention ground by deviating the company rule by Shri Surendra Tiwari, Ex-SR, PCSA of Bishrampur is held to be just and fair.

B. The workman is held entitled to no relief.

C. No order as to costs.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA Presiding Officer

DATE: 9-9-2022

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नॉर्दर्न कोलफील्ड्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 18/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2022 को प्राप्त हुआ था।

[सं. एल-22012/120/2015-आई. आर.(सी एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 26th September, 2022

S.O. 897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2016) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of Northern Coalfield Limited and their workmen, received by the Central Government on *26/09/2022*.

[F. No. L-22012/120/2015 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/18/2016

Present: P.K.Srivastava H.J.S..(Retd)

Shri M.P.Agnihotri,Central Secretary,
Koyla shramik Sabha (HMS) Singrauli,

Amlohri Project,Sigrauli(MP) ...Workman

Versus

The General manager,
Jayant Project,
Northern Coalfields Limited,
Singrauli(MP)486890 ...Management

AWARD

(Passed on 31-8-22.)

As per letter dated 2/2/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/120/2015-IR(CM-II). The dispute under reference relates to:

> "***Whether Shri Amarnath Dubey employed in Jayant Project of Northen Coalfields Limited, Singrauli(MP is entitled for placement as Electrician Category-6 with effect from 30-4-2002 and SLP with effect from 1.1.201 irrespective of the vacancy or not?The demand made by Koyala Shramik Sabha(HMS), Singrauli(MP_ that Shri Amarnath Dubey Electrician should be placed as Electrician Category-6 w.e.f. 30-4-2002 and to get SLP as Assistant Foreman w.e.f. 2011 respectively is justified or not?if not, what relief Shri Amarnath Dubey is entitled to? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Inspite of service of notice, the workman never appeared and did not file the statement of claim

2. The Management has filed the written statement of defence denying the claim of the workman.

3. The workman did not file any evidence oral or documentary. The Management also did not file any evidence.

4. The workman did not appear at the time of arguments, hence the arguments of learned counsel for the Management, Shri A.K.Shashi was heard. The workman did not file any written argument. I have gone through the record as well.

5. The Reference is the issue for determination, in the case in hand.

6. The initial burden to prove his claim lies on the workman by not filing any statement of claim and any oral/documentary evidence in support of his claim. The workman is held to have failed in proving his claim and the reference deserves to be answered against the workman.

7. On the basis of the above discussion, following award is passed:-

A.The claim of the workman as mentioned in the reference is held not just and proper.

B.The workman is held entitled to no relief.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 31-8-2022

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 898.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 89/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/09/2022 को प्राप्त हुआ था।

[सं. एल-23012/164/2018-आई.आर (सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 26th September, 2022

S.O. 898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.89/2018) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on *07/09/2022*.

[No. L-23012/164/2018 – IR (CM-II)]
RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, presiding officer.

ID No.89/2018

Registered on:-11.12.2018
Sh. Sunder Singh S/o Santoo Singh , R/o Village Panolu,
P.O Bushan Tehsil Balh Distt. Mandi (HP)-175001 ...Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board,
   BSL Project, Sundernagar-175038. ...Respondents/Managements

Award
Passed On:- 25.05.2022

Central Government vide Notification No.L-23012/164/2018-IR(CM-II) dated 27.11.2018, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal.

"Whether the action of the management of BBMB in not accepting the demand of Sh. Sunder Singh S/o Sh. Santoo for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?

1. The Ministry of Labour & Employment, Government of India while referring the above Industrial Dispute for adjudication also directed the following:-

"The parties raising the dispute shall file a statement of claim complete within relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each of the opposite parties involved in this dispute under rule 10(B) of the Industrial dispute (Central), Rules, 1957".

2. However, no claim statement was filed by the workman within the stipulated period. Despite the directions of the Central Government not complied by the workman opportunity was provided to the workman and, therefore, on receipt of the above reference notice was sent to the workman as well as to the respondents/managements for appearances for adjudication. The postal article sent to the workman, referred above, is deemed to have been served on the parties under dispute as the post sent has not been received back as undelivered.

3. Workman has been given sufficient opportunities to file claim statement but none turned up in spite of several opportunities afforded to file claim statement. This shows that the workman is not interested in adjudication of the matter on merit.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondents/managements. As such this Tribunal is left with no alternative except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.89/2018.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 899.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 26/2015) प्रकाशित करती है।

[सं. एल-39025/01/2022-आई आर (बी-II)-01]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 26th September, 2022

S.O. 899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.26/2015of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen.

[No. L-39025/01/2022 -IR(B-II)-01]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Friday the 13th day of May 2022, 23 Vaisakha 1944)

ID No.26/2015

Workman/Union : Smt.S. Radhamony
Elankattu House
Ayoor South
Cherukolpuzha
Pathanamthitta – 689611
By Adv.Ashok B. Shenoy

Management : The General Manager
Indian Overseas Bank
Central Office
P.B.No.3765, 763 Anna Salai
Chennai – 600002

By Adv.V. Philip Mathew

This case coming up for final hearing on 28.04.2022 and this Industrial Tribunal-cum-Labour Court on 13.05.2022 passed the following:

AWARD

1. Present claim is filed U/s 2A(2) of the Industrial Disputes Act, 1947.

2. The worker was initially employed as a temporary worker in the subordinate cadre of the Management Bank at their Ayroor Cherukolpuzha Branch employed as Sweeper and Messenger. While so the Management issued a Circular no.EST/71/2010-11 dt.23.03.2011 for absorption of temporary workman in their regular service, pursuant to a settlement between the Management and the Union. The officials at Cherukolpuzha Branch of the Management obtained the application and declaration forms signed from the worker and forwarded the proposal of the worker for absorption in the regular service of the Management along with workers original SSLC Book and other documents available with her. The worker was called for interview vide letter dt.16.08.2011. She was selected and appointed as a messenger in the Pathanamthitta Branch of the Management Bank. She was placed on probation for a period of 6 months. Later the worker's services were confirmed w.e.f. 20.02.2012 vide letter dt.30.03.2012. On 24.12.2014 the services of the worker was abruptly terminated by the Management Bank by serving on her a termination order dt.19.12.2014. The worker's service was terminated without notice enclosing there with a draft for Rs.14,954.72 being one month's pay and allowance in lieu of notice pay. The allegation against the worker was that she had willfully and with ulterior motive submitted a false certificate in support of her educational qualification to obtain appointment in the Management Bank. It was also alleged that the teacher in charge of Marthoma High School, Ayroor confirmed that the Transfer Certificate submitted by the worker is tampered and not genuine. It was also claimed that the worker had submitted only a copy of the Secondary School Leaving Certificate with the application. The worker approached the Regional Labour Commissioner seeking intervention. The conciliation efforts failed as per proceedings dt.27.04.2015. The termination of the worker is in violation of principles of natural justice, without issuing her a charge sheet and without conducting an enquiry into the allegations thereof. The allegation of the Management in the termination order is not correct and the worker has not tampered with the TC nor submitted any false certificate as alleged. Infact her original certificate was produced before the Management along with the proposal for absorption. The termination of the worker is in violation of Sec 25F and 25G of the Industrial Disputes Act,1947 in as much as she is not paid the mandatory compensation as stipulated U/s 25F and in as much as the principles of last come first go is not complied with. The termination of her service was also in

violation of the provisions contained in the all India awards and Bipartite settlements governing the Banking industry. According to the settlement a regular employee like worker could have been terminated only by affording 3 months notice or pay in lieu of such notice. The termination of the worker resorted to by the Management on account of the alleged misconduct in the termination order is also disproportionate excessive and bad, causing grave prejudice to the worker and her family. Ever since her termination she is without any job and facing financial difficulties.

3. The Management filed written statement denying the above allegations. The worker was absorbed as a messenger under the Management by appointment order dt.16.08.2011 subject to the terms and conditions mentioned in circular no.Per.Est/71/2010-11 dt.23.03.2011. The circular was issued based on a settlement dt.17.02.2011 between the Management and the recognized trade union. The worker reported for duty on 20.08.2011 at Pathanamthitta Branch. The worker was absorbed considering her claim that she had worked as temporary Messenger in one of the branches of the Management Bank from 01.05.1991 for more than 240 days in a calendar year preceding 15.11.2010 and continue to work as such. The worker submitted an application dt.04.04.2011 and 20.08.2011. The worker claimed that the date of birth was 25.05.1966 and produced a copy of SSLC book as proof of date of birth. Accepting the application and documents, the Bank entered her date of birth as 25.05.1966 in the Bank records. Subsequent verification and investigation found that her date of birth is 25.05.1964 as per the School records. In the copy of the SSLC certificate produced by the worker, the date of birth is shown as 25.05.1966. On verification with Marthoma School, Ayroor where the worker studied, it was found that her date of birth was 25.05.1964. Thus it was evident that the worker produced a false certificate for getting appointment. As per Circular dt.23.03.2011, the Management has a right to terminate the services of persons absorbed in the service, if it is found that the documents produced by them for joining the Bank is false. The worker herself had given an undertaking dt.04.04.2011 agreeing to terminate her service if it is found that the documents produced by her in support of her age is false. In the application form dt.20.08.2011 the worker had given a declaration that she is liable to be terminated from service without notice or compensation if it is found that the documents produced by her are incorrect or false. It was mentioned in her appointment order dt.16.08.2011 that the appointment would be terminated if certificate produced are found to be not genuine, false, forged or tampered with by giving one month's notice or on payment of a month's pay and allowance in lieu of notice. There is no necessity of giving any notice or conducting any enquiry since the worker produced bogus education certificate to obtain appointment. An applicant who entered service through back door or by producing false certificate is not entitled to continue in service. The Management cannot show any sympathy towards the worker as it would lead to unhealthy precedent. The Hon'ble Supreme Court in **Kerala Solvent Extractions Ltd Vs Unnikrishnan**, 1994 (1) KLT 651 (SC) dismissed the industrial dispute raised by the workman challenging his termination on the above ground. A person getting employment by producing false documents is not entitled to protection of Sec 25F and 25G of ID Act. The appointment itself was void due to fraud and falsification of records. Sub Sec (bb) of Sec 2(oo) excludes termination as per a stipulation in terms of contract from the purview of retrenchment. In this case the appointment order contains a definite stipulation regarding termination of appointment. The claim of the worker that she had produced the original SSLC book before the Management while considering her application is not correct. The claim of the worker that application forms and declarations were got singed from the worker by the officials of Pathanamthitta Branch and sent to Central office of the Bank along with available documents is also not correct. Without prejudice to the above contentions, the Management is prepared to prove the allegations justifying termination of the services of the worker before this Tribunal.

4. The worker filed a replication denying the statements in the written statement filed by the Management. The proposal for absorption of the worker was duly obtained and forwarded by the officials of Ayroor Cherukolpuzha Branch of the Management Bank where she was employed as temporary Sweeper/Messenger from 01.05.1991 onwards. The said proposal after getting signed by the worker was submitted to the Branch where she was working for onward submission to the Central Office of the Management Bank along with the worker's original SSLC Book. The application of the worker was accompanied by the original SSLC Book which was forwarded under the hand and seal of Ayroor Cherukolpuzha Branch of the Management Bank. The original SSLC Book is still under the custody of the Management.

5. After completion of the pleadings, the worker is examined as WW1 and Exbt.W1 to W11 were marked through the witness. The Management confronted photocopies of two documents with the witness. The marking of the documents were strongly objected to by the Counsel of the worker. Subject to objection and proof, the documents were taken on record. The Management examined MW1 and marked Exbt.M1 through him. MW2 was examined as a summoned witness and Exbt.M1(a) is marked through him. When the matter was finally taken up for hearing on the side of the Management on 16.02.2022, the Management filed an IA no.38/2022 seeking to introduce copies of two documents in the proceedings. Marking of the said documents was strongly objected to by the learned Counsel for the worker. It is felt that the marking of documents and admitting additional documents at the time of hearing is not correct and therefore the IA for introducing and admitting the additional documents was rejected.

6. The issues to be decided in this dispute are ;

1. Whether the termination of the worker without following the procedure contemplated U/s 25F of the Act is correct ?

2. Relief and cost ?

7. **Issue no.1**

The learned Counsel for the workman pointed out that the termination of the worker without conducting a disciplinary enquiry and without following the requirement of Sec 25 of ID Act is not legally valid. The learned Counsel for the Management pointed out that the regularization of the worker in the service of the Management Bank was subject to the condition that she should satisfy the eligibility conditions as per Exbt.W1 Circular dt.23.03.2011 and for that, if any of the information furnished in the application is found to be wrong, the worker is liable to be terminated from the service of the Bank without any notice. The learned Counsel for the Management relied on Exbt.W2 application given by the worker wherein at clause (d) of the undertaking it is stated that " Subsequent to my absorption in Bank service, if found that the declaration made by me regarding the period of engagement is found to be false or any of the documents submitted by me in support of the age, qualification, cast etc., is found to be bogus, I will be liable to be terminated from Bank's service". Further in Exbt.W4 while communicating her selection to the post of Messenger in Para 2 of the communication, it is specifically stated that " Your services are liable to be terminated if your work and conduct are found unsatisfactory, any material information is suppressed by you, the certificates submitted by you are found to be not genuine, false, forged or tampered with, by giving one month's notice or on payment of a month's salary in lieu of notice". Further in Exbt.W3 application submitted by the worker and the instructions contained in the application form, it is stated that " Applications which do not contain the full particulars called for are liable to be rejected. If any declaration, statement or information given by the candidate is any time found to be false or untrue or if any material is suppressed or omitted, he is liable to be disqualified and if appointed, his services are liable to be terminated without any notice or compensation in lieu therof". According to the learned Counsel for the Management in view of the above factual position, there is absolutely no illegality in terminating the service of the worker finding that she submitted a copy of the forged SSLC certificate to prove her date of birth. The learned Counsel further relied on the decision of the Hon'ble Supreme Court in **State of Uttarakhand Vs Sureshwati**, AIR 2021 SC 923 wherein the Hon'ble Supreme Court held that

> "Para 14. This Court in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it ".

According to the Counsel, the Management is entitled to lead evidence before this Court to prove that the worker had produced a forged document to substantiate the date of birth of the worker.

8. According to the learned Counsel for the worker, the undertaking in EXbt.W2 and also the application in Exbt.W3 is not filled up by her and the same is done by the officials of the Management Bank and she was only directed to sign the declaration and application. He pointed out that Exbt.W2 undertaking stand testimony to the fact that while counter signing the declaration by the Branch Manager, it is stated that " The contents of this undertaking letter has been translated to vernacular and read over and explained to Mrs.Radhamani and he/she understood the same and accepted the contents as correct and affixed his/her signature in my presence". According to the learned Counsel for the Management, even assuming that the application and undertaking are filled by the officials of the Bank, the date of birth is filled on the basis of the copy of the SSLC certificate produced by the worker. According to him, it can be seen that in Exbt.W3 the date of birth is shown as 25.05.1966 on the basis of the copy of the SSLC Book. The learned Counsel for the Management also pointed out that Exbt.M1 reference made by the Management Bank to the Marthoma High School and Exbt.M1(a) reply given by the School and the oral evidence of MW2 would clearly indicate that the date of birth furnished in the copy of the SSLC certificate is forged. The date of birth as per the School records is 25.05.1964 whereas the date of birth furnished by the worker in Exbt.W3 application is 25.05.1966. According to the learned Counsel for the worker, the worker cannot be held responsible if there is any mistake in the Exbt.W3 application as the same was filled up by the officials of the Bank and she has only put her signature in the form. The learned Counsel for the worker also pointed out that the original SSLC Book was handed over to the officials of the Bank which is clear from Exbt.W2 undertaking given by the worker to the Management. It is stated that " I am enclosing herewith the following documents **in original** along with two attested copies of the same in support of my age, educational qualification, cast etc." and the enclosure at serial no.1 is shown as the SSLC Book. Taking into account all the above facts, it is relevant to examine whether the change in date of birth of the worker has any relevance to the eligibility for the appointment of the worker as a regular messenger. Exbt.W1 dt.23.03.2011 is the Circular issued by the Management for regularizing the service of temporary Messengers/Sweepers subject to certain conditions. As per the above Circular, the educational qualification

is pass in 8th Std or equivalent but the candidate should not have passed 10, +2 examination or its equivalent. Further the age limit is minimum 18 years and maximum of 26 years. As per the above Circular and also the salient features of the terms of settlement at Clause III, the casual/temporary Messenger/Sweeper fulfill the eligibility criteria viz., age fixed by the Bank for recruitment of Messenger/ Sweeper as on 1st day of engagement in the Bank and the qualification as per norms. Hence as per Exbt.W1 notification, the worker shall be between the age limit of 18 and 26 as on the 1st date of engagement in the Bank. As per Exbt.W2 undertaking given by the worker, her date of joining as part time Sweeper in the Management Bank is 01.05.1991. The worker in her evidence as WW1 also stated that she was working against the post of Sweeper and Messenger w.e.f. 01.05.1991. Hence the question is whether the worker was eligible to be considered for the post of Messenger as per the Exbt.W1 Circular. The worker as WW1 was very categorical during her cross examination that her date of birth is 25.05.1964. She further stated that the date of birth shown in the SSLC Book as 25.05.1966 is not correct. Further MW1 also through school records established the fact that the date of birth of the worker is 25.05.1964. If the date of birth of the worker is 25.05.1964, she crossed the age of 26 years as on 01.05.1991 when she joined the service of the Bank as a temporary Sweeper/Messenger on 01.05.1991. Hence the crucial question in this case is that the worker was not eligible as per Exbt.W1 notification to be appointed as a permanent Messenger in the Management Bank. This sufficiently explains the forging of date of birth in the application as well as in the copy of SSLC certificate produced by the worker along with the application. Even if we accept the argument of the learned Counsel for the worker that the date of birth is not corrected by the worker if she is not eligible to be considered for the appointment, any further exercise by conducting a disciplinary enquiry will not improve the case of the worker.

9. The learned Counsel for the worker argued that the Management ought to have followed the procedure prescribed U/s 25 of the ID Act while terminating the service of the worker. The learned Counsel for the Management relied on the decision of the Hon'ble High Court of Delhi in **Vinod Kumar Vs DDA**, W.P.(C) no. 2066/2011 to argue that in such cases the procedure contemplated U/s 25 of the ID Act is not attracted. The Hon'ble High Court held that

> "Para 22. In the instant case, also the allegations against the workman were of securing employment on the basis of forged document which could not be disproved by the workman rather, as stated above, in the entire statement of claim there was not even a whisper that the allegations of the management regarding securing employment on the basis of forged document was wrong. It is evident that the workman cheated the management and obtained the job fraudulently thereby failing to maintain integrity. Since the workman secured employment on the basis of forged document, the appointment was void abinitio. That being so, there was no requirement of compliance of provisions of Sec 25 of the Industrial Disputes Act. A person who seeks equity must act in a fair and equitable manner".

In this case as rightly pointed out by the learned Counsel for the Management, from the notification to the undertaking and the appointment made to the worker, it was made clear that if at a later stage it was found that the information furnished regarding the eligibility such as age, educational qualification and the experience with the Management Bank is found to be wrong, her services would be terminated without any further notice. As already pointed out, the worker was not eligible to be considered for the post of Messenger if her correct date of birth is taken into account and therefore the worker cannot claim that there is any violation of the provisions of natural justice or that of the Industrial Disputes Act, 1947.

10. **Issue no.2**

In view of the findings regarding the ineligibility of the worker to be appointed as Messenger and in view of the fact that she claimed the eligibility only on the basis of the wrong date of birth furnished in the application and forged SSLC certificate, she is not entitled for any relief claimed in this industrial dispute.

11. Hence an award is passed holding that the worker is not entitled to be reinstated in the service of the Management with full back wages continuity of service and attended benefits.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 13th day of May, 2022.

APPENDIX

Witness for the Workman:-

WW1 - Smt.S. Radhamani, dt.06.12.2019

Witness for the Management:-

MW1 - Sri.Dileesh Kumar E. K., dt.05.10.2021

MW2 - Sri.Ninan Koshy, dt.05.10.2021

Exhibits for the Workman:-

W1 - True copy of Circular no.EST/71/2010-11 dt.23.03.2011

W2 - True copy of letter of undertaking submitted by the worker in Annexure A in terms of clause 3(b) of the settlement dt.17.02.2011 for abstorption as temporary messenger/ fulltime /part time sweepers, on 04.04.2011

W3 - True copy Application form dt.20.05.2011 submitted by the worker in prescribed format along with instructions, attestation form and service sheet

W4 - True copy of appointment order dt.16.08.2021 issued by Regional Manager to the worker

W5 - True copy of inter office communication dt.16.08.2011 addressed by Personal Administration Department of Management bank, Ernakulam to Pathanamthitta branch

W6 - True copy of letter dt.30.03.2012 issued to worker by the Management bank confirming her services as Messenger

W7 - True copy of termination order dt.19.12.2014 issued by the Management to the worker on 24.12.2014.

W8 - True copy of industrial dispute filed by the worker before the Assistant Labour Commissioner (Central), Trivandrum on 09.01.2015

W9 - True copy of reply statement filed by the Management bank before the Regional Labour Commissioner (Central), Trivandrum on 27.01.2015

W10 - True copy of rejoinder filed by worker before the Regional Labour Commissioner (Central), Trivandrum on 23.03.2015

W11 - True copy of the conciliation report dt.27.04.2015 issued by the Regional Labour Commissioner (Central), Trivandrum

Exhibits for the Management:-

M1 - True copy of letter dt.27.09.2012 from Chief Manager, Management Bank to their Central office, Chennai

M1 (a) - True copy of letter dt.22.09.2012 issued from the Teacher In Charge/Headmaster, Marthoma High School, Kottathoor P.O., Ayroor

V. VIJAYA KUMAR Presiding Officer

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेर्सस सिंडिकेट बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण–सह–श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 44/2020) प्रकाशित करती है।

[सं. एल-12011/41/2020-आई आर(बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 44/2020) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of M/.s. Syndicate Bank and their workmen.

[No. L-12011/41/2020 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Wednesday the 27th day of July 2022, 5 Sravana 1944)

ID No. 44/2020

Workman/Union : The Vice President
Syndicate Bank Staff Association(Regd)
49/746 'Krishna', Karama Road
Elamakkara
Kochi - 682026

Managements : 1. The Deputy General Manager
M/s.Syndicate Bank
Regional Office
1st Floor, Pioneer Tower
Shanmugham Road
Ernakulam - 682031

2. The General Manager
M/s.Syndicate Bank
Personal Department
Head Office, Manipal
Karnataka – 576104

By Adv.R. S. Kalkura

This case coming up for final hearing on 27.07.2022 and the same day this Industrial Tribunal-cum-Labour Court passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/41/2020-IR(B-II) dated 25.11.2020 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

" Whether the demand of Syndicate Bank Staff Association to regularize the service of Smt.Amminikutty, temporary employee of Syndicate Bank is justified or not? If justified, to what relief the worker is entitled to ?"

3. After receipt of the order of reference from Govt of India, summons dt.28.12.2020 was issued to the parties concerned. The matter was posted for appearance of the parties on 17.02.2021. The summons was acknowledged by the parties concerned. Thereafter the matter was posted on 23.08.2021, 11.10.2021, 06.01.2022, 30.03.2022 and 27.07.2022. Though the summons was acknowledged by the parties, there was no representation from the side of the Union and no claim statement is filed even after more than one year. The Management entered appearance on 27.07.2022.

4. It is felt that the Union is not interested in pursuing the industrial dispute.

5. Hence a 'no dispute award' is passed holding that there is no merit in the claim of the Union.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 27th day of July, 2022.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 901.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण–सह–श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ सं. 46/2015) प्रकाशित करती है।

[सं. एल-39025/01/2022-आई आर(बी-II)-02]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 46/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[No. L-39025/01/2022 -IR(B-II)-02]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer.

(Wednesday the 20th day of April 2022, 30 Caitra 1944)

ID No. 46/2015

Workman : Sri.P. Chandra Babu
TC No.37/3411, VPXI/251
Valiyaduppa Veettil
Kudamon Bhagam
Vattiyoorkavu P.O.
Trivandrum –

By Adv.M. R. Sarin Panick

Managements : 1. The Deputy General Manager
Union Bank of India
Regional Office, Statue
Trivandrum – 695001

2. The Assistant General Manager
Union Bank of India
Disciplinary Authority Nodel –
Regional Office
M. G. Road
Ernakulam – 682035

3. The Enquiry Officer
Union Bank of India
Regional Office, Statue
Trivandrum – 695001

4. The Manager
Union Bank of India
Regional Office, Statue
Trivandrum – 695001

By Adv.M. S. Sajeev Kumar

This case coming up for final hearing on 16.11.2021 and this Industrial Tribunal-cum-Labour Court on 20.04.2022 passed the following:

AWARD

1. Present claim is filed U/s 2A(2) of the Industrial Disputes Act, 1947.

2. According to the claim application, the workman joined the service of the Management as a Sweeper w.e.f. 05.11.1989 at Kazhakuttam Branch. Later he was transferred to Thankamani Branch in Idukki District in 1990. In 1995, he was promoted as Peon and posted to Kuttichal Branch. Later he was transferred to Kulathoor Branch and

thereafter to the main Branch at Trivandrum. Again he was transferred to Attingal Branch as Peon. Since he was sick, he requested for leave from 12.11.2011 to 31.3.2012. On 31.05.2013 he went to Regional Office, Trivandrum along with a medical certificate to resume duties. But the workman was informed that a departmental enquiry was conducted against him and as per the report of the Enquiry Officer, the workman was dismissed from service on charges of gross misconduct of doing acts prejudicial to the interest of the Bank. The workman filed an application before the Enquiry Officer to re-open the enquiry. The enquiry if any, was conducted in violation of principles of natural justice. Since the Management failed to act, he filed a complaint to the Assistant Labour Commissioner (Central) on 25.02.2015.

3. The Management filed written statement denying the above allegations. The workman joined the Management Bank on 30.11.1989 as part time Sweeper on stipend basis. He was promoted as Peon w.e.f. 15.01.2007 and was transferred to Attingal Branch on 29.10.2007. It is absolutely incorrect to say that the workman had requested for leave from 12.11.2011 to 03.11.2012. The workman remained unauthorizedly absent since 05.10.2010. As per Memorandum dt.24.11.2011, the workman was transferred to Regional Office, Trivandrum to report on or before 28.11.2011 but the workman remained absent without reporting for duty. It is true that the workman produced a medical certificate on 31.05.2013. By that time, due to continuous unauthorized absence the Management was compelled to initiate disciplinary action. A departmental enquiry was conducted and based on the report of the Enquiry Officer, the service of the workman was terminated on charges of gross misconduct. The Hon'ble Supreme Court of India in **Viveka Nand Sethi Vs Chairman, J & K Bank Ltd and others**, 2005 5 SCC 337 held that merely sending leave application on medical grounds will not entitle a person that he has valid ground to stay away from duty and that in such a case Bank is fully entitled to take a decision in this regard. The Hon'ble Court went to the extent of observing that in such cases there is no further requirement of conducting a detailed enquiry and giving notice to join is sufficient compliance of the principles of natural justice. It is absolutely incorrect to say that there was violation in principles of natural justice. The Management issued communications with regard to the enquiry and consequential disciplinary proceedings to his last known address. The workman did not respond to any of the communications.

4. The workman filed a rejoinder denying the claim of the Management in the written statement.

5. On 31.12.2020 the Counsel for the workman submitted that the workman is no more and legal heirs are required to be impleaded. The matter was adjourned to 27.01.2021 for taking steps. On 27.01. 2021 no steps were taken for impleading the legal heirs of the workman. On 30.06.2021 the Counsel for the workman filed an impleading petition to implead the legal heirs of the deceased workman. However the learned Counsel for the workman was directed to file the impleading petition along with the documents such as Death Certificate of the workman and Relationship Certificate of the proposed additional workmen with the deceased workman. The learned Counsel for the Management submitted that all the terminal benefits due to the deceased workman were released to the legal heirs, except Pension for which he is not entitled to. The Management also produced documentary evidence to that effect. Thereafter there was no representation from the side of the workman nor they pursued the impleading petition.

6. It is seen that the workman was dismissed from service after conducting a departmental enquiry. He did not participate in the enquiry and remained absent. The basic charge against the workman was that he was continuously absent from his duties without even applying for any leave. On the basis of the pleadings and evidence produced by the workman as well as the Management, I don't find any infirmity in the action taken by the Management. Further it is also confirmed by the Management that all the terminal benefits other than Pension had already been released to the legal heirs of the workman.

7. Considering the facts, circumstances and evidence in this case, I am inclined to hold that there is no merit in the claim of the workman.

8. Hence an award is passed holding that the workman is not entitled for reinstatement as claimed in this industrial dispute.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 20th day of April, 2022.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 902.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 13/2021) प्रकाशित करती है।

[सं. एल-12011/46/2020-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 13/2021) of the Cent.Govt. Indus. Tribunal-cum-Labour Court, Kanpur shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[No. L-12011/46/2020 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR

Present: Soma Shekhar Jena HJS (Retd.)

I.D. No. 13 of 2021

L-12011/46/2020-IR(B-II) dated 04.01.2021

BETWEEN

The General Secretary,
Union Bank staff Association, U.P. C/o
Union Bank of India, Main Branch,
87, Civil Lines,
Bareilly (U.P)-243001

AND

The Deputy General Manager,
Union Bank of India,
Regional Office, 117/H-1/240,
Pandu Nagar,
Kanpur(U.P)-208005

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-12011/46/2020-IR(B-II) dated 04.01.2021

SCHEDULE

1. ***"Whether the action of the management of Union Bank of India, Kanpur in conducting ERM meeting with Union Bank Employees Union on 14.06.2019 i.e., minority union and whether the demand of Union Bank Staff Association, U.P. to treat the minutes of meeting dated 14.06.2019 held with the Union Bank Employees Union as routine meeting, is just, fair and legal? If not, to what relief Union Bank Staff Association, U.P. is entitled and from which date"?***

On receipt of notification, notices were issued to both the parties on 28th June 2021 fixing 02.09.2021 for filing of claim statement. But none appeared on behalf of interested parties on the fixed date. On 14.12.2021 Authorized Representative appeared on behalf of the management and filed an authority letter. After that several dates were fixed for filing the claim statement but none appeared on behalf of the claimant before the Tribunal. Despite giving ample opportunities to the claimant union for submitting statement of claim ; claimant union failed to present the case before the Tribunal. On 14.07.2022 the case was reserved for final award for non-appearance of the worker's union.

From the aforesaid circumstances it is presumable that the claimant union is not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

Date: 21.07.2022 SOMA SHEKHARJENA Presiding Officer

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 903.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनाइटेड बैंक आफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 99/2018) प्रकाशित करती है।

[सं. एल-12012/24/2018-आई आर (बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.99/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur shown in the Annexure, in the industrial dispute between the management of United Bank of India and their workmen.

[No. L-12012/24/2018 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR

Present: Soma Shekhar Jena HJS (Retd.)

I.D. No. 99 of 2018

L-12012/24/2018-IR(B-II) dated 02.11.2018

BETWEEN

Member, Working Committee,
UP Bank Workers Organisation,
3/13 Mathura Nagar, ALIGARH(U.P)-

AND

1. The General Manager,
United Bank of India, Head Office,
Personal Adm(Award Staff.11,
Hemanta Basu Sarani,
Kolkata-700001

2. The Chief Regional Manager,
United Bank of India,
80/1, Commercial Complex,
Mangal Pandey Nagar,
Meerut(U.P)-

AWARD

This award arises in respect of the reference mentioned in the schedule stated below as received from the Government of India in letter no. L-12012/24/2018-IR(B-II) dated 02.11.2018

SCHEDULE

1. ***"Whether the action of the Regional Manager, United Bank of India, Meerut not considering the transfer request of Smt. Ankita Arora From Meerut Region to Ahmedabad Region on spouse ground is just, fair and legal? If not, what relief of the workman concerned is entitled to" ?***

On receipt of notification, notices were issued to both the parties on 18th December 2018 fixing 25.01.2019 for filing of claim statement. But none appeared on behalf of interested parties on the fixed date. On 12.04.2019 Authorized Representative appeared on behalf of the management and filed an authority letter. After that several dates were fixed for filing the claim statement but none appeared on behalf of the claimant before the Tribunal. Despite giving ample opportunities to the claimant workman for submitting his averments; claimant failed to present his case before the Tribunal . On 30.06.2022 the case was reserved for final award for non-appearance of the worker's union.

From the aforesaid circumstances it is presumable that the claimant is not interested in prosecuting the case further before the Tribunal.

Hence in the given circumstances the reference stands disposed of as of 'NIL' award.

Parties are left to bear their respective costs.

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

Date: 12.07.2022 SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 904.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनाइटेड बैंक आफ इंडिया के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 111/2018) प्रकाशित करती है।

[सं. एल-12012/26/2018-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.111/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur shown in the Annexure, in the industrial dispute between the management of United Bank of India and their workmen.

[No. L-12012/26/2018 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT KANPUR

Present: Soma Shekhar Jena HJS (Retd.)

I.D. No. 111/2018

Ref. No. L-12012/26/2018-IR(B-II) Dated: 27.11.2018

BETWEEN

Member, Working Committee,
UP Bank Workers Organisation, 3/13,
Mathura Nagar, Aligarh (U.P.)

AND

1. The Executive Director,
United Bank of India,
Head Office, II, Hemanta Basu Sarni,
Kolkata- 700001.

2. The Chief Manager,
United Bank of India,
II, Hemanta Basu Sarani,
Kolkata- 700001.

3. The Regional Manager,
United Bank of India,
80/1, Commercial Complex,
Mangal Pandey Nagar,
Meerut (U.P.) -250004.

AWARD

1. By order No. L -12012/26/2018-IR(B-11) dated: 27/11/2018 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this Industrial dispute to this CGIT - cum- Labour Court, Lucknow for adjudication .

2. The reference under adjudication is:

"Whether the transfer of Shri Manoj Kumar Jain (SWO B) United Bank of India , Kolkata from Aligarh to Katihar (Bihar) and whether penalty imposed upon the workman during pendency of conciliation proceedings is just legal and fair ? If not, what relief is to provided to the concerned workman?"

3. The order of reference was endorsed to the Member , Working Committee UP Bank Workers Organisation, 3/13, Mathura Nagar, ALIGARH (UP) with the direction to the party raising the dispute to file the statement of claim along with relevant Documents, list of reliance and witnesses with the tribunal within fifteen days of the receipt of the order of reference and also to forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957 .

4. The order of reference was registered in the Tribunal on 21/12/2018 and the office was directed to issue registered notice to the workman's union for filing the statement of claim with the list of reliance & list of witnesses on 08/02/2019. On the date fixed i.e. 08/02/2019 none turned up on behalf Union. The management filed its authority; accordingly, next date 21/5/2019 was fixed for filling of statement of claim. The Union remained absent on 21/5/2019 as well as on subsequent date i.e. 16/07/2019. The Union neither turned up on any of the aforementioned dates nor moved any application on 20/8/2019, 21/11/2019, 24/01/2020. More than three years' time has passed and the workman's Union has not filed its statement of claim, therefore, the case was reserved for award keeping in view the reluctance of the workman's Union to prosecute the case.

5. It is presumable that the Claimant side is not interested to pursue the Industrial Dispute referred to this Tribunal and the remedy. Hence, resultantly no relief is required to be given to the workman concerned.

The reference stands disposed of with nil Award.

SOMA SHEKHAR JENA, Presiding Officer

Left a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 905.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 53/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2022 को प्राप्त हुआ था।

[सं. एल-22013/01/2022-आई.आर(सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 27th September, 2022

S.O. 905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.53/2020) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 07/09/2022.

[No. L-22013/01/2022–IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No. 53/2020

Registered on:-24.08.2020

Smt. Mukto Devi Wd/o Late Prabhu Ram &
Others legal Heirs Village-Bala P.O Dahed,
Pargana Gherwin, Tehsil-Jhandutta Distt. Bilaspur –H.P. ...Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038 ...Respondents/Managements

AWARD

Passed On:- 25.05.2022

Central Government vide Notification No.8(5)2020/B-IV/CHD, dated 14/08/2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal.

> "**Whether the action of the management of BBMB in not accepting the demand of Smt. Mukto Wd/o Late Prabhu Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?**

1. The Ministry of Labour & Employment, Government of India while referring the above Industrial Dispute for adjudication also directed the following:-

> ***"The parties raising the dispute shall file a statement of claim complete within relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each of the opposite parties involved in this dispute under rule 10(B) of the Industrial dispute (Central), Rules, 1957".***

2. However, no claim statement was filed by the workman within the stipulated period. Despite the directions of the Central Government not complied by the workman opportunity was provided to the workman and, therefore, on receipt of the above reference notice was sent to the workman as well as to the respondents/managements for appearances for adjudication. The postal article sent to the workman, referred above, is deemed to have been served on the parties under dispute as the post sent has not been received back as undelivered.

3. Workman has been given sufficient opportunities to file claim statement but none turned up in spite of several opportunities afforded to file claim statement. This shows that the workman is not interested in adjudication of the matter on merit.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondents/managements. As such this Tribunal is left with no alternative except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.53/2020.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer,

नई दिल्ली, 27 सितम्बर, 2022

का.आ. 906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 48/2020) को प्रकाशित करती है,जो केन्द्रीय सरकार को 07.09.2022 को प्राप्त हुआ था।

[सं. एल-22013/01/2022-आई.आर(सी.एम-II)]

राजेन्द्र सिंह अवर सचिव

New Delhi, the 27th September, 2022

S.O. 906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.48 /2020) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on *07/09/2022*.

[No. L-22013/01/2022–IR (CM-II)]

RAJENDER SINGH Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No. 48/2020

Registered on:-24.08.2020

Smt. Geeta Devi Wd/o Late Sh. Roshan Lal &
Others legal heirs village Sajoori,
Post Ofice-Sajaopiplu, tehsil-Dharampur,
Distt. Mandi H.P .... Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038 ....Respondents/Managements

AWARD

Passed On:- 25.05.2022

Central Government vide Notification No.ID8(3)/2020-B-IV,CHD dated 14/08/2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal.

"***Whether the action of the management of BBMB in not accepting the demand of Smt. Geeta Devi Wd/o Late Sh. Roshan Lal for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?***

1. The Ministry of Labour & Employment, Government of India while referring the above Industrial Dispute for adjudication also directed the following:-

"The parties raising the dispute shall file a statement of claim complete within relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each of the opposite parties involved in this dispute under rule 10(B) of the Industrial dispute (Central), Rules, 1957".

2. However, no claim statement was filed by the workman within the stipulated period. Despite the directions of the Central Government not complied by the workman opportunity was provided to the workman and, therefore, on receipt of the above reference notice was sent to the workman as well as to the respondents/managements for appearances for adjudication. The postal article sent to the workman, referred above, is deemed to have been served on the parties under dispute as the post sent has not been received back as undelivered.

3. Workman has been given sufficient opportunities to file claim statement but none turned up in spite of several opportunities afforded to file claim statement. This shows that the workman is not interested in adjudication of the matter on merit.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondents/managements. As such this Tribunal is left with no alternative except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.48/2020.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S. K. THAKUR, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 907.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं .2 दिल्ली के पंचाट (संदर्भ सं. 110/2011) प्रकाशित करती है।

[सं. एल–12012/33/2011-आई.आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.110/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.-II, Delhi shown in the Annexure, in the industrial disputebetween the managementof Punjab National Bank and their workmen.

[No. L-12012/33/2011–IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 110/2011

Date of Passing Award- 1.09.2022

Between:

Shri Milind Goel,
S/o Shri Mam Chand Goel,
House No. 105, Mohalla- Chaklan,
Kankhal, Haridwar. .... Workman

Versus

1. General Manager (HRD),
Punjab National Bank,
7, Bhikaji Cama Place, New Delhi.

2. Chief Manager/ Circle Head,
Punjab National Bank,
Circle Office,
BHEL, Ranipur, Sector-4
Haridwar.

3. Sr. Manager,
Punjab National Bank,
Peeth Bazar, Jwalapur,
Haridwar. .... Managements

Appearances:-

None for the claimant (A/R) : For the claimant

Shri Rajat Arora (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Punjab National Bank, 7, Bhikaji Cama Place, Syndicate Bank, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/33/2011 (IR(B-II) dated 11/11/2011 to this tribunal for adjudication to the following effect.

"Whether Shri Milind Goel S/o Late Shri Mam Chand Goel, Ex-CTO is workman under ID Act, 1947. If so, whether his termination of service by the Punjab National Bank vide order dated 31.12.2009 is legal and justified? What relief he is entitled to?"

This order deals with the grievance of the claimant with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled against him.

In order to deal with the dispute and the grievance of the claimant it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant was working as CTO in PNB Branch at Peeth Bazar Jawalpur Haridwar. By an order dated 23.02.2008 he was placed under suspension by the Senior Manager on account of an alleged act of misconduct. He was found involved in serious misconduct by issuing an ATM Card in respect of an inoperative saving bank account of one Suraj Prakash Seth. For that purpose he used the user Id and password of the clerk cum cashier of the Bank having name Rakesh Kumar. He also managed to verify the same using the userID and password of the then manager of the Branch of Peeth Bazar Jawalpur having name Shri Pal Bhardwaj. But the ATM card so issued was never handed over to the account holder but retained by the claimant. He then started debiting money from the ODFD account of the bank and crediting the same to the account of Suraj Prakash Seth on different dates. Thereafter he started withdrawing the said amount from the account of Suraj Prakash Seth using the ATM Card issued by him. When this act of misconduct was detected he was placed under suspension and as per the terms of bipartite settlement and the conditions laid down in Shashtri Award charge was framed, served on him calling him to showcause. Instead of giving reply the claimant disputed the authority of the person framing the charge. After that the inquiry officer was appointed and again the claimant was informed to participate in the inquiry. As in the earlier occasion the claimant did not participate in the inquiry and challenged the legality of the appointment of the inquiry officer and presenting officer. For the non cooperation and non participation of the claimant during the inquiry, the same was held exparte and the inquiry officer submitted his report notwithstanding the non participation of the claimant as the chargesheeted employee. The disciplinary authority, on receipt of the inquiry report served showcause notice alongwith the inquiry report on the claimant. In reply the claimant submitted his representation requesting to setaside the disciplinary proceeding. But the explanations submitted was not found satisfactory and the disciplinary authority imposed the punishment on the claimant for discharge from service with superannuation benefit. The claimant instead of making any departmental appeal made correspondence with the disciplinary authority to know as to who is the appellate authority. No appeal being filed the order of the disciplinary authority attained finality. The claimant thereafter raised an industrial dispute before the conciliation officer taking a stand that the domestic inquiry against him was never conducted following the Principles of Natural Justice. The attempt for conciliation since failed the appropriate government referred the matter for adjudication on the legality and justification of the punishment imposed on the claimant.

After completion of pleading and considering the stand taken by the management issues were framed and the issue relating to the fairness of the inquiry was directed to be decided as a preliminary issue as the Tribunal, before deciding the justification and correctness of the punishment awarded is required to decide if the inquiry, a quasi judicial proceeding was conducted fairly observing the Principles of Natural Justice.

This tribunal by order dated 21.02.2022 have already decided the said issue against the claimant holding that the procedure adopted during the inquiry was correct and the claimant was allowed due opportunity to defend himself. But he did not avail the same. It has also been held that the procedure prescribed pursuant to the bipartite settlement where properly followed during the inquiry. Thus the parties were called upon to advance argument on the proportionality of the punishment imposed. After 21.02.2022 the claimant stopped participating in the proceeding and the Ld. A/R for the management advanced his argument on the date fixed with regard to the proportionality of the punishment.

The Ld. A/R for the management supported the order imposing the punishment as proper and submitted that the kind of misconduct committed by the claimant false within the category of severe misconduct. The same had tarnished the image of the Bank which thrives on the interpersonal relationship with the customers and in the long run influenced the business of the Bank. But the disciplinary authority being sympathetic towards the claimant had passed the order of dismissal alongwith the pensionary benefits. He thereby argued the punishment imposed was never harsh.

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar Coalliery Kamgar Union (2005) 3 SCC331,**The Hon'ble SC have held:-

"it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

It is a decided principle of law that the power of the tribunal u/s 11A is not arbitrary or unguided. This power is not without limitation as well. The Tribunal can interfere with the punishment imposed by the disciplinary authority when for reasons to be recorded it gives a finding that the punishment is disproportionate to the proved guilt or charge. In the case of **LIC of India vs. R. Dhandapani, (2006)13SCC 613,** the Hon'ble Supreme Court have clearly held that

the power u/s 11A is to be exercise only when the punishment is found to be suckingly disproportionate to the degree of guilt of the workman. To support its conclusion the industrial tribunal has to give reasons in support of its decision.

Whether a misconduct is severe or otherwise, depends on the facts of each particular case. In a case where the charge is about misappropriation of a customer's money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in – subordination. Moreover the finding in this inquiry is based upon the oral and documentary evidence collected during the inquiry. It is a matter of record that the claimant, on detection of the wrong done by him, was placed under suspension as his further continuance in the post held by him was found detrimental to public interest. He was called upon to submit an explanation to the charge. The claimant opted not to give any explanation but challenged the authority who framed the charge and the authority for appointment of enquiry officer and presenting officer. It is a fact noticeable that the claimant never participated in the inquiry and when the disciplinary authority served a showcause notice on him he again challenged the authority of the disciplinary authority. The disciplinary authority when accepted the inquiry report and passed the order imposing punishment, the claimant, as seen from the record never seriously challenged the said order. Instead he made correspondence to know as to who is the appellate authority. For no appeal being filed the order of the disciplinary authority attained finality.

In the case of **Regional Manager U.P.SRTC, Etawah & Others VS Hotilal and another, 2003(3) SCC 605, referred in the later case of U.P.SRTC VS Nanhelal Kushwaha (2009) 8 SCC, 772,** the Hon'ble Apex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

As stated in the preceeding paragraph the allegation against the claimant was of misconduct leading to loss of faith and Trust of the customer which in turn, led to loss of confidence of the employer on the employee.

The learned AR for the management while placing reliance in the case of **M/S Firestone Tyre and Rubber Co of India vs. The Management And Others** argued that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

On hearing the argument advanced by the Ld. A/R for the management it is felt proper to observe here that in the case of **Firestone** referred supra, the Hon'ble SC have held that after incorporation of the provision of sec 11A in the ID Act, the Tribunal in order to record a finding on the fairness of the domestic inquiry or the proportionality of the punishment, cannot be confined to the materials which were available at the domestic inquiry. On the other hand 'material on record' in the proviso to sec 11A of the ID Act must be held to refer the materials before the Tribunal. Which are (1) the evidence taken in by the parties during the domestic inquiry (2) the evidence taken before the Tribunal. But in this case no evidence has been adduced by the claimant before this Tribunal to presume that the punishment imposed is disproportionate to the charge. The evidence was adduced to prove the irregularities in conduct of the domestic inquiry, which was not found worthy of acceptance. Thus on considering the evidence recorded during the domestic inquiry and adduced before this Tribunal, the one and only conclusion is that the punishment imposed on the claimant for misappropriation of customer's money amounting to misconduct is proportionate to the charge and same has been imposed for loss of confidence on the employee by the employer. Hence it is not felt proper to interfere and modify the punishment imposed by the disciplinary authority, in exercise of the power conferred u/s 11A of the ID Act. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant. The finding of the disciplinary Authority in imposing the punishment is held proportionate to the finding of misconduct. The claimant is held not entitled to any relief. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 63/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2022 को प्राप्त हुआ था।

[सं. एल-22013/01/2022-आई.आर(सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.63/2020) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on *07/09/2022*.

[No. L-22013/01/2022 – IR (CM-II)]

RAJENDER SINGH Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No.63/2020

Registered on:-27.10.2020

Sh. Rattan Singh S/o Sh. Baru Ram,
R/o Village- Bard, P.O-Suhana Tehsil-Ghumariwin Distt.
Bilaspur Himachal Pradesh ...Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160019.
2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sundernagar-175038. ...Respondents/Managements

AWARD

Passed On:- 25.05.2022

Central Government vide Notification No.8(11) 2019/B-IV/CHD, dated 26/10/2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal.

"Whether the action of the management of BBMB in not accepting the demand of Sh. Rattan singh S/o Sh. Baru Ram for deeming/considering him in continuous service upto age of superannuation and resultantly entitled for consequential benefits is legal, just and valid? If not, to what relief the workman concerned is entitled to and from which date?

1. The Ministry of Labour & Employment, Government of India while referring the above Industrial Dispute for adjudication also directed the following:-

"The parties raising the dispute shall file a statement of claim complete within relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each of the opposite parties involved in this dispute under rule 10(B) of the Industrial dispute (Central), Rules, 1957".

2. However, no claim statement was filed by the workman within the stipulated period. Despite the directions of the Central Government not complied by the workman opportunity was provided to the workman and, therefore, on receipt of the above reference notice was sent to the workman as well as to the respondents/managements for appearances for adjudication. The postal article sent to the workman, referred above, is deemed to have been served on the parties under dispute as the post sent has not been received back as undelivered.

3. Workman has been given sufficient opportunities to file claim statement but none turned up in spite of several opportunities afforded to file claim statement. This shows that the workman is not interested in adjudication of the matter on merit.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondents/managements. As such this Tribunal is left with no alternative except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.64/2020.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 909.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय **नं.** 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 32/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2022 को प्राप्त हुआ था।

[सं. एल-22013/01/2022-आई.आर(सी.**एम-**II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.32/2020) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on *07/09/2022*.

[No. L-22013/01/2022 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No.32/2020

Registered on:-02.07.2020

Sh. Mohammad Kalam S/o Sh. Mohammad Kayamudin,
76-Dwarkagarh, Ram Bazar, Shimla, Himachal Pradesh ....Workman

Versus

1. The Chairman cum Managing Director, Food Corporation of India, 16-20, Barakhamba Lane, New Delhi.
2. The Executive Director, Food Corporation of India, A-2A, A-2B, Sector-24, Noida, Uttar Pradesh.
3. The General Manager(Region), Food Corporation of India,
   Regional Office, Lane No.1, Sector-2, New Shimla, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:-15.07.2022

Central Government vide Notification No.ID-8(20)2020/B-IV/CHD dated 01.07.2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of management of Food Corporation of India in terminating the services of Sh. Mohammad Kalam S/o Sh. Mohammad Kayamudin w.e.f. 10.10.2018 is legal and justified? If not, to what relief the workman is entitled to and from which date?

1. On receipt of the above reference, notice was sent to the workman as well as to the respondent/management. The postal article sent to the workman, referred above, is duly delivered to the workman. Workman is given sufficient opportunities to file claim statement but did not turn up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.
2. Learned counsel for the management submitted that the workman has not even filed written statement of claim till now and neither appearing in the hearing since the beginning of the proceeding. Therefore the proceeding may be closed as there is no claim on the part of the workman.
3. On perusal of the record it is found that the submissions and statement of the learned Advocate of the management side are true.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondent/management, this Tribunal is left with no option, except to pass 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.32/2020.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 910.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 29/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.09.2022 को प्राप्त हुआ था।

[सं. एल-22013/01/2022-आई.आर(सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2020) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on *07/09/2022*.

[No. L-22013/01/2022 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No.29/2020

Registered on:-02.07.2020

Sh. Ram Nath Saha S/o Sh. Ganesh Raha,
76-Dwarkagarh, Ram Bazar,
Shimla, Himachal Pradesh ...Workman

Versus

1. The Chairman cum Managing Director, Food Corporation of India, 16-20, Barakhamba Lane, New Delhi.
2. The Executive Director, Food Corporation of India, A-2A, A-2B, Sector-24, Noida, Uttar Pradesh.
3. The General Manager(Region), Food Corporation of India,
   Regional Office, Lane No.1, Sector-2, New Shimla,
   Himachal Pradesh ...Respondents/Managements

AWARD

Passed on:-15.07.2022

Central Government vide Notification No.ID8(22)2020/B-IV-CHD dated 01.07.2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of Food Corporation of India in terminating the services Sh. Ram Nath Saha S/o Sh. Ganeshi Saha w.e.f. 10.10.2018 is legal and justified? If not, to what relief the workman is entitled to and from which date?**

1. On receipt of the above reference, notice was sent to the workman as well as to the respondent/management. The postal article sent to the workman, referred above, is duly delivered to the workman. Workman is given sufficient opportunities to file claim statement but did not turn up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Learned counsel for the management submitted that the workman has not even filed written statement of claim till now and neither appearing in the hearing since the beginning of the proceeding. Therefore the proceeding may be closed as there is no claim on the part of the workman.

3. On perusal of the record it is found that the submissions and statement of the learned Advocate of the management side are true.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondent/management, this Tribunal is left with no option, except to pass 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.29/2020.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 911.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार बी बी एम बी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 28/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/09/2022 को प्राप्त हुआ था।

[सं. एल-22013/01/2022-आई.आर(सी.एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 911.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.28/2020) of the Central Government Industrial Tribunal-cum-Labour Court NO. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of BBMB and their workmen, received by the Central Government on 07/09/2022.

[No. L-22013/01/2022–IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. S.K. Thakur, Presiding Officer.

ID No.28/2020

Registered on:-02.07.2020

Sh. Mohammad Yusuf Bath S/o Sh. Gulam Hassan Bath, 7
6-Dwarkagarh, Ram Bazar, Shimla,
Himachal Pradesh .... Workman

Versus

1. The Chairman cum Managing Director, Food Corporation of India, 16-20, Barakhamba Lane, New Delhi.
2. The Executive Director, Food Corporation of India, A-2A, A-2B, Sector-24, Noida, Uttar Pradesh.
3. The General Manager(Region), Food Corporation of India, Regional Office, Lane No.1, Sector-2, New Shimla, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:-15.07.2022

Central Government vide Notification No.ID-8(13)2020/B-IV/CHD dated 01.07.2020, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of management of Food Corporation of India in terminating the services of Sh. Mohammad Yusuf Bath S/o Sh. Gulam Hassan Bath w.e.f. 10.10.2018 is legal and justified? If not, to what relief the workman is entitled to and from which date? "**

1. On receipt of the above reference, notice was sent to the workman as well as to the respondent/management. The postal article sent to the workman, referred above, is duly delivered to the workman. Workman is given sufficient opportunities to file claim statement but did not turn up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Learned counsel for the management submitted that the workman has not even filed claim statement and not appearing for hearings since long despite several opportunities provided by the Tribunal whereas the management side is representing continuously. Therefore, the proceeding may be closed as there is no claim on the part of the workman.

3. On perusal of the record it is found that the submissions and statement of the learned Advocate of the management side are true.

4. Since the workman has neither put his appearance nor he has filed statement of claim to prove his cause against the respondent/management, this Tribunal is left with no option, except to pass 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the instant reference ID No.28/2020.

5. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

S.K. THAKUR, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 912.—औद्योगिकद विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यु.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह-श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 15/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2022 को प्राप्त हुआ था।

[सं. एल. 22012/184/2013-आई.आर(सी एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2014) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of W.C.L. and their workmen, received by the Central Government on *27/09/2022.*

[No. L-22012/184/2013 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/15/2014

Present: P.K.Srivastava H.J.S..(Retd)

The Joint Secretary,
National Colliery Mazdoor Sangh (INTUC)
Deegawani, Tehsil Parasia,
Chhindwarha ...Workman

Versus

The Chief General Manager,
Western Coal Fields Limited,
Pench Area, P.O.Parasia,
District Chhindwara ...Management

AWARD

(Passed 2-9-2022)

As per letter dated 10/2/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/184/2013-IR(CM-II). The dispute under reference relates to:

"Kya shri Bhugal singh Yadav, S/o shri Mewalal, purv telephone fitter helper, Thesgaora Khan ko mukhya Mahaprabhandak , W.C.L.Pench area Parasia, Chhindwara dwara janch karyavahi kar naukari se barkhast kiya jana nyayuchhit hai?Yadi nahi to kamgar kya anurosh paane ka adhikari hai? ."

After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defence.

According to the workman he was first appointed as Telephone helper in Category II by the management in 1994. He was issued a charge sheet on 2-2-2002 with the following charges No:-

1-Habitual negligence in discharging duties.

2-Habitual absence without reason during different periods mentioned in the Charge sheet.

3. He filed written reply regarding his absence wherein he stated that in July and August he was in jail in connection with a criminal case against him as he was arrested by police on 30-6-2001. He was released on bail on 3-8-2001. Thereafter he approached the Management and requested the Management to permit him to join his job which was refused by Management. On 14-9-2001 he again requested the management to let him join his job. His request was granted and he joined his job on 19-9-2001. In October-2001 his wife Smt. Kusum was admitted in camp hospital from 29-9-2001 to 22-1-2002. He applied for leave which was not sanctioned. In November-2001 he fell sick and was admitted in camp Hospital in Ravpada Khas and thereafter in camp hospital in Badkuhi and informed the Management but Management did not consider it and took it as absence without information. In December-2001 he joined his duties but due to illness he could not attend his job from 1-12-2001 to 22-1-2002 for which leave was sanctioned by Management. From January-2002 to April-2002 he was admitted in District Hospital Chhindwarha for which he filed the supporting documents. The Management conducted an inquiry against the settled principles of law and wrongly held that his absence was habitual and unauthorized. And passed the impugned sentence of termination of his services which is bad in law and excessive. Accordingly the workman prayed for setting aside of his termination order and holding him entitled to reinstatement with all back wages and benefits.

4. The management contested the claim with a case that the workman was charged with habitual and unauthorized absence for different period mentioned in the charge sheet and habitual negligence in discharging duties for which a departmental inquiry was conducted as per rules and procedures. He was held guilty for the misconduct. The charges provided maximum punishment of dismissal from service and he was terminated from service as the charges were held proved. According to the Management, the punishment is proportionate to the charges and the reference deserves to be answered against the workman.

5. On the basis of the pleadings, following preliminary issues was framed :-

"Whether the Inquiry conducted against the workman is just, proper and legal?"

6. Parties were required to lead evidence on this preliminary issue. The workman filed two documents, copy of charge sheet and copy of show cause notice issued by the Disciplinary Authority both admitted by Management and marked as Exhibit W-1 and Exhibit W-2 respectively. Copy of inquiry proceedings was filed by management, admitted by workman and marked as Exhibit M1 and M2 and M3 respectively. None of the parties lead any oral evidence.

7. The Preliminary issue was decided vide order dated 13-6-2022, holding the departmental inquiry legal and proper. Following additional issues were framed by the same order:-

2."Whether the charges are proved from the inquiry papers?"

3.Whether the punishment is disproportionate to the charge?

4.Relief to which the workman is entitled to?"

8. The order dated 13-6-2022 holding the departmental inquiry legal and proper while deciding the preliminary issue No.1 is part of this Award.

9. None of the parties have lead any evidence on additional issues, hence the arguments from both the sides were heard and record has been perused by me.

10. ISSUE NO.2:-

Learned counsel for workman has submitted that to constitute a mis-conduct, the absence must be unauthorized and willful. He submits that every unauthorised absence is not always willful. The learned counsel has relied on case of **Krushnakant B.Parmar Vs. Union of India & Another**, Civil Appeal No.2106 of 2012,where in it has been observed that when a government employee who remained unauthorisedly absent from duty, cannot be proceed against until the charges proved his absence willful and not result of compelling circumstances. According to the Apex Court, unauthorized absence from duty and willful absence from duty are two separate things. Learned counsel submits that the absence of workman in the case in hand might be unauthorized but it was not willful because the documents show that he was suffering and was under treatment, hence, as submitted by learned counsel for workman the finding of the Inquiry Officer that charge of mis-conduct is proved, cannot be sustained in fact and law.

11. Learned Counsel for management has referred to Rules 7.5, 12.4, 12.5 and 13 of Standing orders and has submitted that in case a worker is sick, there is prescribed procedure to be adopted in such a situation. The workman failed to observe that procedure. Learned Counsel, further referred to Rule 26.24 and 26.30 which defines misconduct which is reproduced as below:-

Rule 7.5:- Absence from Place of work:-

Any workman who after going underground or after coming to his work in the department/section in which he is employed, is found absent from his proper place of work during working hours without permission from the Appropriate Authority or without any sufficient reasons shall be liable to be treated as absent from the period of his absence.

Rule 12.5:- Application for leave or extension of leave on medical grounds shall be supported by a certificate from the Medical Office of the company or where there is no such officer a government medical officer of the company or where there is no such officer, a government medical officer or failing him, from a Registered Medical practitioner, stating the period for which leave is recommended. On receipt of such application , the sanctioning authority shall immediately inform the workman in writing whether the leave or extension of leave has been granted and is so for what period. An employee who has been sanctioned leave or an extension of leave on medical ground for an period exceeding 14 days at a time shall not be allowed to resume duty unless he produced a certificate of fitness. If no information is received by the workman, from the Management, regarding leave in question as applied, for, it may be presumed to be granted."

Rule -13:-

Application for leave:- A workman who desires to obtain leave of absence shall apply in writing to the Competent authority, not less than 15 days before the commencement of the leave, except where leave is required in unforeseen circumstances and the competent authority shall issue orders on the application within a week of its submission of two days prior to the leave applied for is to commence on the date of the application or within three days thereof orders shall be given on the same day. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefore shall be recorded in writing in a register to be maintained for the purpose and if the workman so desires a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave, desires an extension thereof, he shall apply to the competent authority who shall send a written reply either granting or refusing extension of leave to the workman. Section/refusal of leave shall be communicated to the workman in writing.

Rule 26.24 :-

Habitual late attendance or habitual absence from duty without sufficient cause.

Rule 26.30:-

Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave.

12. He submits that since it proved that the workman is a habitual absentee as stated in defence statement and the workman could not show any medical papers regarding his treatment for the period of absence in the charge sheet, his absence must be held willful. Learned Counsel further submits that when unauthorized absence is not disputed by workman the burden to prove that it was not willful rather was due to some compelling circumstances, lies on the workman who alleges it.

13. In the case in hand, as it appears from the perusal of the Inquiry papers, it is proved that the absence of the workman was many fold for different period. According to him in the month of July and August 2001, he was absent because he was in jail in connection with some criminal charge. In the month of October-November, he was absent

because his wife was in the process of having a family(delivery) and he had to look after her. IN the month of December he was on leave from 29-12-2001 to 22-1-2022 and when he came back he fell ill on 23-1-202 and was under treatment in Chhindwarha Hospital. He was declared fit on 29-4-2002. Regarding proof of his treatment, he stated during the inquiry proceedings that certificate of treatment was sent by the Hospital to the Management. According to the Management this certificate was never produced in his cross-examination during the inquiry to which the workman has stated that he has already filed the proof regarding his detention in July and August-2001 . Regarding absence from 29-9-2001 to 22-10-2001, he states that he had been working from the Hospital and has no proof regarding absence of this period. He admits that he did not send any information regarding the admission and treatment of his wife in Private Hospital. He further states that during the period 23-1-2002 to 29-4-2002 he could not get treatment in Company Hospital because he fell seriously ill and his acquaintances got him admitted in Chhindwarha Hospital. He did not explain his absence from 29-4-2002 to 10-5-2002. His this statement, since it is not supported by any documentary proof filed during inquiry as it appears from the inquiry papers proved, it is not satisfactorily explained, his absence of different period as mentioned.

14. Reference of Section 106 of the Indian Evidence Act requires to be referred here which is as under:-

"Burden of proving fact especially within knowledge- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

Thus it makes it clear that the burden of proving the fact especially in the knowledge of a person lies on him. Hence in this case also, the burden of proving the facts and justifying his absence was on the workman during the inquiry. This burden could be discharged by filing documents and statement of witnesses in any form as well documents of diagnosis/admission and treatment.

Accordingly, it clear that when a fact is in special knowledge of any person, burden of proving that fact is on that person hence the burden of proving the fact that he was ill and was under medical treatment during the period of his absence from duty lies on the workman. This burden can be discharged by filing documentary evidence for example Medical Certificate, certificate of fitness, documents regarding diagnosis and treatment or by examining the Doctor under whose treatment the workman was during the period in question. Workman did not file any fitness certificate or medical certificate or any paper regarding diagnosis or treatment nor did he examined any Doctor under whose treatment he was during the period in question. The workman has examined himself on oath. He has stated in his affidavit filed as his examination-in-chief that he never absented himself during his service period whenever he remained on leave, he had filed his application for leave and during the period of his sickness also, he had filed his application for leave except this self serving statement, there is no document in support. He admits that the dispensary and hospital facilities are available to the workman and their families near the mines. He pleads ignorance about the free treatment given to workman in the management's hospital. When the management witness has stated that the workman did not file any certificate or papers regarding his illness and treatment, the burden of proving the fact that he had filed application with the management, is on the workman and he has failed to discharge this burden. Thus from the comparative analysis of evidence as respect to above produced by the parties, it comes out that **firstly,** the workman absented himself during the period as mentioned above and **secondly**, the reason for absence alleged by the workman is not established. Hence it is held that the absence of workman for the period as mentioned above is without sufficient cause, meaning **thereby it is held proved that the workman absented himself during the period in question as referred above unauthorizedly, without informing the management and without any leave sanctioned**. It will not be out of scope to refer the case of **New India Assurance Company Ltd versus Vipin Beharilal Srivastava reported in (2008)3 Supreme Court Cases 446.** The Apex Court has laid down that mere sending an application for grant of leave is not sufficient. In para-11 of the judgment, the court has observed as follows-

Para-11 The rules governing "leave" read as follows:

(1) General principles governing grant of leave. The following general principles shall govern the grant of leave to the employees;

(a) Leave cannot be claimed as a matter of right.

(b) Leave shall be availed of only after sanction by the competent authority, but one days casual leave may be availed of without prior sanction in case of unforeseen emergency, provided the head of the office is promptly advised of the circumstances under which prior sanction could not be obtained.(4) Sick leave-

(c) Sick leave can be granted to an employee only on production of a medical certificate from a registered medical practitioner, which term would include homeopathic, ayurvedic and Unani Doctor also provided they are registered medical practitioners.

(d) The certificate should state as clearly as possible the diagnosis and probable duration of treatment."

A reference of Rule 12.5 & Rule 13 of Certified Standing Orders applicable in the case of parties , referred to by learned counsel for management is also necessary which is as under:-

Rule 12.5: Application for leave or extension of leave on medical grounds shall be supported by a certificate from a Medical Officer of the company or where there is no such officer, a government Medical Officer or failing him, from a Registered Medical practitioner, stating the period for which leave is recommended. On receipt of such application, the sanctioning authority shall immediately inform the workman in writing whether the leave or extension of leave has been granted and if so for what period. An employee who has been sanctioned leave or an extension of leave on medical ground for a period exceeding 14 days at a time shall not be allowed to resume duty unless he produced a certificate o fitness. If no information is received by the workman, from the management, regarding leave in question as applied for, it may be presumed to be granted."

Rule-13: Application for leave:- A workman who desires to obtain leave of absence shall apply in writing to the Competent Authority, not less than 15 days before the commencement of the leave, except where leave is required in unforeseen circumstances and the competent authority shall issue orders on the application within a week of its submission of two days prior to the commencement of the leave applied for whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof orders shall be given on the same day. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose and if the workman so desires a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave, desires an extension thereof, he shall apply to the competent authority who shall send a written reply either granting or refusing extension of leave to the workman. Sanction/ refusal of leave shall be communicated to the workman in writing.

Similarly Rule 26.24 & 26.25 which deal with misconduct are also being reproduced as follows:-

Rule 26.24- Habitual late attendance or habitual absence from duty without sufficient cause.-

15. Hence keeping in view the rules and procedures mentioned as above in the charge sheet, the finding of the Inquiry Officer, holding him liable for willful absence and negligence in discharging of duties, proved, cannot be held to be perverse and does not require any interference. **Accordingly Issue No.2 is decided.**

16. ISSUE NO.3:-

Learned counsel for Management refers to Rule 27.1 which provides punishment of dismissal from service for this type of misconduct. The following case laws support the claim of the Management:-

Hon'ble Apex Court in ***B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

> ***"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."***

In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

> ***Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department /establishment which the delinquent person concerned works."***

In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

"..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

Hon'ble Apex Court in *Administrator,* ***Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that :

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

17. In the light of the above discussion, the punishment of dismissal cannot be said to be shockingly disproportionate to the charges. Accordingly, holding that the punishment does not warrant any judicial intervention by this Tribunal, this **Issue No.3 is answered accordingly.**

18. ISSUE NO.4;-

On the basis of the above findings, the workman is held entitled to no relief. **Accordingly Issue No.4 has been answered.**

19. On the basis of the above discussion, following award is passed:-

A. The action of the Management of Thesgaora Mines,Pench Area, Parasia, District Chhindwarha in terminating the services of Sh. Bhugul Singh Yadav, S/o Shri Mewalal,Purv Telephone Fitter Helper is held to be legal and justified.

B. The workman is held entitled to no relief.

20. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 2-9-2022

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 913.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 05/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2022 को प्राप्त हुआ था।

[सं. एल. 22011/1/2014-आई. आर. (सी एम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 913.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2014) of the Central Government Industrial Tribunal-cum-Labour Court Asansol as shown in the Annexure, in the industrial dispute between the Management of F.C.I. and their workmen, received by the Central Government on *27/09/2022*

[No. L-22011/1/2014–IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

Present: Shri Ananda Kumar Mukherjee,
Presiding Officer
C.G.I.T-cum-L.C., Asansol

REFERENCE NO. 05 OF 2014

PARTIES: The Area Manager, Food Corporation of India, Bankura (W.B.).

Vs.

The Secretary, Paschim Banga Mutia Mazdoor Union, Adra, Purulia (W.B.).

REPRESENTATIVES:

For the Management: Mr. Pradip. Kr. Goswami, Learned Advocate.

For the Union (Workmen): Mr. Milan Kumar Bandyopadhyay, Learned Advocate.

INDUSTRY: Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

STATE: West Bengal.

Dated: 15.09.2022

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22011/1/2014 – IR(CM-II)** dated 24.02.2014 and Corrigendum dated 13.11.2014 has been pleased to refer the following dispute between the employers, that is the Management of Food Corporation of India and their workmen for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the Management of Food Storage Depot, FCI, Adra, West Bengal by not enhancing wages, not providing overtime and medical facility and categorizing the Mutia Mazdoor and ancillary workers engaged under NWNP system as 'unskilled' are justified/legal? If not, to what relief the workmen are entitled to? "

1. On receipt of the Order No. **NO. L-22011/1/2014 – IR(CM-II)** dated 24.02.2014 followed by Corrigendum dated 13.11.2014 from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case No. 05 of 2014 was registered on 28.02.2014 and an order to that effect was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with the relevant documents in support of their claims and a list of witnesses. Both parties appeared before the Tribunal through their authorized representatives.

2. Written statements were filed by Secretary, Food Corporation of India Mazdoor Union, representing the labourers and by the Management of Food Corporation of India. Paschim Banga Mutia Mazdoor Union, Adra also filed Rejoinder.

3. For deciding the issues referred above, Shri Probodh Kr. Kumbhokar, Secretary, Paschim Banga Mutia Mazdoor Union, Adra union of Food Corporation of India filed his affidavit-in-chief. The witness was cross-examined exhaustively on 17.04.2017, 21.06.2017, 07.02.2018 and 25.06.2018. Documents have also been produced by the concerned Mazdoor union

4. Tribunal adverted to consider the legality and justifiability of the following claims laid by the workmen **: (i)** Enhancement of their wages by fixing rates as per minimum wages for the year from 2004 to 2011, **(ii)** Designating the unskilled workers as skilled labours, **(iii)** demand for providing Medical facilities to the casual labourers, and **(iv)** paying arrears of overtime allowances for the period from July, 2011 to December, 2013.

5. Mr. Anjan Kumar Samal, Area Manager, Food Corporation of India, Bankura (W.B.) in their written statement submitted on behalf of the Management has categorically refuted all the claims of the workmen, challenging their legal sanctity. It is asserted that the job related to Food Storage Depot only requires physical fitness of the labours engaged. The nature of work involved does not require any special skill and the labourers cannot claim any promotion or upgradation as skilled labour in view of its definition. It is contended that revision of wages is not applicable for NWNP workers from 2004 to 2011. Prior to the introduction of NWNP system on 30.06.2011 the labourers worked on contract basis, engaged by contractors as per Contract Labour (R&A) Act, 1970. Therefore, Food Corporation of India had no direct control over the casual workers and there was no employer-employee relationship between them at the material point of time. Management claimed that the casual workers also received Minimum wages at the prevailing rate of the locality as prescribed by the appropriate authority.

6. In so far as the claim of Arrears of overtime for the period from July,2011 to December, 2013 it is asserted by the Management that the said benefit was extended to NWNP workers of Food Storage Depot, Adra w.e.f. December, 2013 on the basis of Circular No. IR(L)/31(38)/2012 dated 22/23.11.2013, as such the Management is not in a position to provide arrears of overtime for a period from July,2011 to December,2013.

7. With reference to the claim for Medical facilities, the Management disclosed that medical facility is extended to NWNP workers under the ESI scheme but the workers at Food Storage Depot, Adra could not avail such facility as the Purulia revenue district has not been covered by ESI Act- 1948 and no code number has been allotted for the area. Therefore, Management is not in a position to provide medical facilities beyond its limitation.

8. The workmen witnesses failed to establish their claim contrary to the assertion of the Management case.

9. On 13.09.2022, when the Reference case was fixed up for adducing evidence by the Management Witness (MW) none was found available on behalf of the Management of Food Corporation of India. Mr. Milan Kumar Bandyopadhyay, learned advocate for Paschim Banga Mutia Mazdoor Union, Adra submitted that the union is not inclined to proceed further with the case and the same may be disposed of.

10. Having considered the dispute under reference for adjudication by this Tribunal as well as materials on the record, it appears to me that the workmen represented by their union is not in a position to substantiate their claims on the basis of the ground reality. The submissions made by the learned advocate for the workmen further persuades me to hold that the union is not inclined to contest the case any further. In view of such facts, I hold that there is No Dispute between the parties on the schedule Reference. Accordingly, the case is closed and a **No Dispute Award** be passed.

Hence,

ORDER

Let an Award be passed in the light of the findings that **No Dispute** exists between the parties. Let copies of this Order be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and the needful. The Reference case is accordingly disposed of.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 914.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं. 2 दिल्ली के पंचाट (संदर्भ सं. 276/2019) प्रकाशित करती है।

[सं. एल-39025/01/2022-आई आर (बी-II)-03]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 276/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.-II, Delhi shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen.

[No. L-39025/01/2022 -IR(B-II)-03]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty

ID.NO. 276/2019

Shri Anil Kumar,
Through, Dena Bank Employees Association ,
Dena Bank, Service Branch, 9-E, Connaught Circus,
New Delhi-110001. ...Workman

Versus

The Zonal Manager, Dena Bank,
Dena Bank Zonal Office, 6th Floor, Tower -1,
Konnectus Tower Bhavbhuti Marg,
New Delhi-110001. ...Management.

AWARD

In the present case, a reference was received from the appropriate Government vide reference no. ND-96(17)2019-ID-FOC-Dy. CLC dated 10.12.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

> **"Whether the services of the workman Sh. Anil Kumar, Cashier, have been terminated by the management of Dena Bank, illegally and /or unjustifiably and if so to what relief is he entitled and what directions are necessary in this respect?"**

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the management. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 915.—औघोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण–सह–श्रम न्यायालय नं .2 दिल्ली के पंचाट (संदर्भ सं. 37/2014) प्रकाशित करती है।

[सं. एल-12012/85/2008-आई आर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 19/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. -II, Delhi shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen.

[No. L-12012/85/2008 -IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 19/2009

Date of Passing Award- 16.08.2022

Between:

Shri Rajpal Singh,
R/o 140/22, Street No. 38, Sadh Nagar-II,
Palam Colony,
New Delhi- 110045. .... Workman

Versus

The General Manager,
Syndicate Bank, Sarojini House 6,
Bhagwan Dass Road,
New Delhi. ...Management

Appearances:-

Shri Kumar Gaurav ...For the claimant

(A/R)

Shri Rajesh Mahindru ...For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Syndicate Bank, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/85/2008 (IR(B-II) dated 05/02/2009 to this tribunal for adjudication to the following effect.

"Whether the action of the management of Syndicate Bank in Awarding the punishment of termination from services of Shri Rajpal Singh w.e.f 31/12/2002, after acquittal of the workman by the court is just, fair and legal? What relief the concerned workman is entitled to and from which date?'

This order deals with the grievance of the claimant with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled against him.

In order to deal with the dispute and the grievance of the claimant it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant, an ex army person, at the relevant time was working as the attender in the management Bank at it's Head District Office, Gurgaon. He was initially appointed as probationary attender on 04/10/1983 and confirmed in the service of the Bank on 04/04/1984. On a complaint that while working in the central Accounts Office during the period 09/10/1986 to 24/10/1986, the claimant removed / destroyed some cheques having value of Rs 74, 000/- when presented for clearance and managed to cause wrong full gain to himself by crediting the account to his own account. The mischief was detected and when confronted the claimant admitted his guilt. He was placed under suspension with effect from 22/11/1986 and FIR was lodged against him on 25/11/1986. Since the criminal Trial was pending against him the departmental domestic inquiry was kept on hold as agreed in the Bipartite Settlement applicable to the claimant and the Bank. Since the criminal Trial prolonged for an unreasonably long period the Bank on a sympathetic consideration, revoked the order of suspension and the claimant was re instated in to duty from 27/02/1998. During the period of suspension he was paid subsistence allowance as admissible. On 06/07/2000 the trial of the criminal case ended with a finding of acquittal as benefit of doubt was extended to him. There after the Bank started the departmental proceeding, which started with the framing of charge. All the procedures required for the said inquiry was followed and the claimant as the charged employee had participated in each and every stage of the inquiry which culminated with a finding of guilt by the inquiring officer. The order of inquiry was served on the claimant calling him to show cause as to why the proposed punishment shall not be imposed on him. The explanation offered not being found satisfactory, the disciplinary authority passed the order of termination from service. The departmental appeal preferred by him was rejected and the order of the disciplinary authority was confirmed.

Being aggrieved the claimant raised an industrial dispute in which amongst others he pleaded about unfairness in conduct of the inquiry. On completion of the pleadings, issues were framed and the issue relating to the fairness of the inquiry was considered as the preliminary issue, since the Tribunal, before deciding the justification and correctness of the punishment awarded is required to decide, if the inquiry, a quasi judicial proceeding was conducted fairly and by observing the Principles of Natural Justice.

This Tribunal by order dated 25/03/2022 have already decided the said issue against the claimant holding that the procedure adopted during the inquiry was correct and the claimant was allowed due opportunity to defend himself. Not only that it has also been held that the delay in framing the charge and commencement of the inquiry after closure of the criminal Trial has not caused prejudice to the claimant as the same is in accordance to the terms of Bipartite settlement and order of acquittal recorded in a criminal Trial shall not necessarily terminate the departmental proceeding in favour of the charge sheeted employee as the standard of proof required in those proceedings re distinct and separate. Thus the claimant was called upon to advance argument on the proportionality of the punishment imposed. Both parties advanced detailed argument in support of their respective stand.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh. During course of argument it was pointed out by the AR for the claimant that for the long drawn litigation the claimant was deprived of contesting the matter properly and now suffering for the illegal order of dismissal. Hence a lenient view may be taken in the matter and the fact of acquittal in the criminal trial be considered for deciding the proportionality of the punishment. The counter argument by the learned AR for the Bank is that it is a case of loss of confidence. The business of the Bank thrives on the faith and confidence of the customers. The action of the claimant had visibly impacted the business of the Bank and as such he does not deserve any sympathy.

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar Coalliery Kamgar Union (2005) 3 SCC331,**The Hon'ble SC have held:-

"it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Whether a misconduct is severe or otherwise, depends on the facts of each particular case. In a case where the charge is about misappropriation of a customer's money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in – subordination, as in this case. More over the finding in the relevant inquiry is based upon the oral and documentary evidence. It is a matter of record that the claimant, on

detection of the wrong done by him, had admitted about the misappropriated amount. The explanation offered by the claimant was found not acceptable by the disciplinary authority and the departmental appellate authority.

In the case of **Regional Manager U.P.SRTC, Etawah & Others VS Hotilal and another, 2003(3) SCC 605, referred in the later case of U.P.SRTC VS Nanhelal Kushwaha (2009) 8 SCC, 772,** the Hon'ble Apex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

As stated in the preceeding paragraph the allegation against the claimant was of misconduct leading to loss of faith and Trust of the customer which in turn, led to loss of confidence of the employer on the employee.

The learned AR for the management while placing reliance in the case of **M/S Firestone Tyre and Rubber Co of India vs The Management And Others** argued that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act by placing reliance in the case of **ML Singla vs. Punjab National Bank, AIR 2018 SC 4668,** submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment commensurate the charge.

It is felt proper to observe here that in the case of **Firestone** referred supra, the Hon'ble SC have held that after incorporation of the provision of sec 11A in the ID Act, the Tribunal in order to record a finding on the fairness of the domestic inquiry or the proportionality of the punishment, can not be confined to the materials which were available at the domestic inquiry. On the other hand 'material on record' in the proviso to sec 11A of the ID Act must be held to refer the materials before the Tribunal. Which are (1) the evidence taken in by the parties during the domestic inquiry (2) the evidence taken before the Tribunal. But in this case no evidence has been adduced by the claimant before this Tribunal to presume that the punishment imposed is disproportionate to the charge. The evidence was adduced to prove the irregularities in conduct of the domestic inquiry, which was not found worthy of acceptance. Thus on considering the evidence recorded during the domestic inquiry and adduced before this Tribunal, the one only conclusion is that the punishment imposed on the claimant for misappropriation of customer's money amounting to mis conduct is proportionate to the charge and same has been imposed for loss of confidence on the employee by the employer. Merely because the claimant was acquitted from the criminal charge and granted benefit of doubt, will not put him in a position for sympathy. Hence it is not felt proper to interfere and modify the punishment imposed by the disciplinary authority, in exercise of the power conferred u/s 11A of the ID Act. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant. The finding of the disciplinary Authority in imposing the punishment is held proportionate to the finding of misconduct. The claimant is held not entitled to any relief. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 28 सितम्बर, 2022

का.आ. 916.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 38/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2022 को प्राप्त हुआ था।

[सं. एल. 22012/215/95-आई. आर. (सी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 28th September, 2022

S.O. 916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/96) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on 27/09/2022.

[No. L-22012/215/95 – IR (C-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/38/96(8-9-2022)

Present: P.K.Srivastava H.J.S..(Retd)

The Secretary
Sanyukt Khadan Mazdoor Sangh
West Jhagrahand Colliery
Jiolla Sarguja(M.P.) ...Workmen

Versus

The Sub-Area Manager
SECL, Post J,.K, D.Colliery
Jilla Sarguja(M.P.) ...Management

AWARD

(Passed on 8-9-2022.)

As per letter dated 30/1/1996 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947.hereiafter referred to by the word'Act', as per Notification No.L-22012(215)/95-IR(C-II) The dispute under reference relates to:

> "***Whether the demand of Samyukta Khadan Mazdoor Sangh(AITUC) of regularisation of Sh Sakur, Shri Lal Rai, Shri Ram Prasad, Shri Ghanshyam Pandey and Sh. Rajmani Verma,. Contract workers engaged in Jhangrakhand Colliery is legal and justified? If not, what relief they are entitled to?.***"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.

2. According to the Workmen Union, the workmen were engaged as departmental mazdoor by the management of SECL Hasdeo Area and Jhagrakhand Colliery since 1982. They were deployed in the jobs of permanent and perennial nature like electric helper , trammer, pipe line fitter lamp room etc. though labour supply contract by M/s Shubh Karan Bhura in prohibition of Contract Labour (Regulation & Abolition) Act 1970. Engaging contract workers in jobs of permanent and perennial nature as per Certified Standing Orders and National Coal Wage Agreement(hereinafter in short referred to as NCWA) was against law. The Management of Hasdeo area initiated a process of absorbing its workers on permanent roll during the period 11-02-1992 to 03-02-1995 which was circumvented by the Senior Manager level thus paying only minimum wages to these mazdoor workmen which is also against the provisions of Minimum Wages Act. According to the workmen Union, the contract and contractor were a camouflage adopted by the Management to avoid their liability to pay equal wages to these workmen which was being paid to the workmen on regular rolls discharging the same duties. The workmen union further states that these workmen were granted leave by the management. The Management used to direct the jobs to be taken by them and they used to work under the direction and control of the Management. The jobs were also allotted by the employees of the Management. They were paid their wages at the colliery counter individually and not through the alleged contractor. Some of the labourers thus engaged were already engaged on the permanent role of the Management and are working under the control of the management of SECL in Hasdeo area. They are P.K.Rai, Clerk Grade-I at Kapildhara mine, Smt. Sheefali Sinha, Clerk Grade-1 at North Jhagarakhand Colliery, M.P.Gupta Clerk Grade 1 in the office of General manager Hasdeo Area. The workmen Union has further alleged that the attendance of these workmen was also taken by the Management of SECL. The workmen Union raised dispute regarding payment of regular wages and regularization of these workmen. The Management discontinued their services w.e.f. 31-3-1993 during the pendency of conciliation proceedings which is bad in law and is against Industrial Disputes Act,1947. Accordingly, the workmen union has prayed that they be paid difference of wages between minimum wages and rates prescribed to the permanent workers discharging the same duties in the light of National Coal Wage Agreements also

that their services be regularized as all of them had completed continuous 240 days of working in every year, including the year preceding the year of their dis-engagement.

3. According to the Management of SECL, the claimant workmen namely Shakur Ali, Lal Rai, Ramprasad, Rajman Verma and Ghanshyam raised the present dispute through the Union in the year 1996 whereas they claim to have been engaged since 1982, hence their claim is barred by delay and latches on their part. Secondly, as pleaded by management, the reference itself is vague as it does not discloses the particulars/identification of the claimant/beneficiaries nor does it disclose their period of their deployment. According to the Management, these claimant workmen were never engaged by the Management of SECL in any capacity. There is no relation of employer and workmen between the parties. These workmen were never appointed by the Management of SECL, hence question of regularization of their services does not arise. According to the management, it is subsidiary of Coal India Limited which is covered by Government of India, the company has its own recruitment policy and procedure. The claimants have not been engaged following any procedure. The Management denies the allegations of the claimant workmen that they were deployed in the jobs of permanent and perennial nature as claimed by them. It also denies the claim of the workmen Union that these workmen were engaged by the Contractor M/s Shubh Karan Bhura. According to the management, the said contractor under took the work of civil nature. The Union has nowhere disclosed that this contractor had engaged 20 or more persons. Registration of contractor is required and Contract Labour (Regulation & Abolition) Act 1970 is applicable to Contractors engaging 20 or more persons. Also it has been denied that any other claimant workmen worked continuously for 240 days in any year. Accordingly, the management has requested that the reference be answered against the Workmen Union.

4. In evidence, the workmen union has examined the claimant workmen Rajman Verma, witnessAkhtar Javed Usmani and workman Shakoor Ali on oath . They have been cross-examined by the Management.

5. The management has examined its witness G.Shyamla Rao, Senior Manager Personnel who has been cross-examined by the workmen Union.

6. The workmen side has filed and proved documents exhibits W1 to W4. They are copy of I.I.No.35, leave applications of workmen to Management, Exhibit W-2(W2Am W2B, W2C respectively, attendance sheet Exhibit W-3 and direction slips (1 to 26 in numbers collectively marked as Exhibit W-4). The management has not filed nor proved any document .

7. I have heard argument of learned counsel Mr. R.C.Shrivastava for Workmen Union and learned counsel Mr. A.K.Shashi for the Management. I have gone through the record as well as the written argument filed by then workmen Union through its learned counsel. Vide his order dated 5-4-2010, my learned predecessor has framed the following two issues:-

(1) Whether the demand of the workmen Union Samyukta Khadan Mazdoor Sangh (AITUC) for regularization of contract workers engaged in Jhagrakhand colliery is legal and Justified?

(2) What relief they are entitled to?

8. <u>ISSUE NO.1:-</u>

The respective pleadings of the parties on this issue has been detailed earlier. Learned Counsel for the workmen has submitted in his argument that following facts arise on the basis of evidence i.e. **Firstly**, the applicant workmen were engaged in the year 1982 by the Principal Employer directly and continued till March-1993 which goes to show that there was a relationship of employer and employee between the parties. **Secondly,**, the work to the applicant workmen was allotted by the management of SECL who also supervised their work. It was the same work performed by the regular workers of the SECL in the same area and other area also. **Thirdly,** that the machinery and material were supplied by the Management and even the leave of the applicant workmen was also sanctioned by the Management of SECL. These facts establish that the contractor was only a camouflage used by the Management to deprive the applicant workmen of their legitimate rights regarding payment of equal wages and regularization which is unlawful labour practice. Also, it is submitted that since the work was of permanent and perennial nature, it could not be taken through contract workers, hence any contract between any contractor and Management with reference to this applicant workmen has no force of law, and rather it is a sham transaction. Learned Counsel has further submitted that it is on Management to prove that the applicant workmen were in fact were contract engaged labour and the contract is genuine as well as binding between the parties also that it is not a sham transaction . The learned counsel has referred to the following judgments in this respect:-

1. **<u>ONGC Limited Vs. Petroleum Coal Labaour Union & Others</u>** (2015) FLR 443. Relevant para 40 is as follows:

Further, it has been contended by the learned senior counsel on behalf of the Corporation that in the absence of any plea taken by the workmen in their claim statement regarding unfair labour practice being committed by the Corporation against the concerned workmen, the learned single Judge and the Division Bench ought not to have entertained the said plea as it is a well settled principle of law that

such plea must be pleaded and established by a party who relies before the Tribunal. In support of the above contention reliance was placed by him on the decision of this Court in Siemens Limited & Anr. v. Siemens Employees Union & Anr.[13] The said contention of the learned senior counsel on behalf of the Corporation is wholly untenable in law and the reliance placed on the aforesaid case is misplaced for the reason that it is an undisputed fact that the workmen have been appointed on term basis vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 by the Corporation who continued their services for several years. Thereafter, they were denied their legitimate right to be regularised in the permanent posts of the Corporation. The said fact was duly noted by the High Court as per the contention urged on behalf of the Corporation and held on the basis of facts and evidence on record that the same attracts entry Item No.10 of Schedule V of the Act, in employing the concerned workmen as temporary employees against permanent posts who have been doing perennial nature of work and continuing them as such for number of years. We affirm the same as it is a clear case of an unfair labour practice on the part of the Corporation as defined under Section 2(ra) of the Act, which is statutorily prohibited under Section 25T of the Act and the said action of the Corporation warrants penalty to be imposed upon it under Section 25U of the Act. In fact, the said finding of fact has been recorded by both the learned single Judge and the Division Bench of the High Court in the impugned judgment on the ground urged on behalf of the Corporation. Even if, this Court eschews the said finding and reason recorded in the impugned judgment accepting the hyper technical plea urged on behalf of the Corporation that there is no plea of unfair labour practice made in the claim statement, this Court in this appeal cannot interfere with the award of the Tribunal and the impugned judgment and order of the High Court for the other reasons assigned by them for granting relief to the concerned workmen. Even in the absence of plea of an act of unfair labour practice committed by the Corporation against the concerned workmen, the Labour Court/High Court have got the power to record the finding of fact on the basis of the record of the conciliation officer to ensure that there shall be effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger interest of public, which is the prime object and intendment of the Industrial Disputes Act. This principle of law has been well established in a catena of cases of this Court. In the instant case, the commission of an unfair labour practice in relation to the concerned workmen by the Corporation is ex-facie clear from the facts pleaded by both the parties and therefore, the courts have the power to adjudicate the same effectively to resolve the dispute between the parties even in the absence of plea with regard to such an aspect of the case.

2. Caparo Engineeriang India Limited Vs.P radhanmantri Engineering Shramik Sangathan,(2019) 1 MPLJ 147, the relevant portion para-31 is reproduced as below:-

(b) Evidence Act, Section 102- Burden of Proof Petitioner Company's case that employees are contract labour- therefore, Labour Court has rightly shifted burden on them to establish this- No error committed by Labour Court while directing petitioner to lead evidence and prove that respondents are contract laborers "

3. The learned Counsel for workmen/Union has also referred to case law **Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and others, (1978)4 SCC 257**. The relevant portion in para-4 and 5 is reproduced below: -

4. This argument is impeccable in laissez faire economics 'red in tooth and claw' and under the Contract Act rooted in English Common Law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. This Court in Ganesh Beedi's case 1974 (1)LLJ 367 has raised on British and American rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner.

5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the

conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.

The relevant portion of the judgement is quoted below: -

*"**Para-18:** ..... We, however, believe that this present case is not one of regularization simpliciter such as in the case of an ad hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of ONGC or the contractor and in the event that they were the employees of the former, a claim to be treated on a par with other such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill-worded reference.*

Para-21: Even ONGC had admitted that since 1988, there was no licensed contractor and that wages were being paid through one of the leaders of Union, and one person who was named as contractor, was in fact himself a workmen whose name appeared in acquaintance roll. Real issue therefore was regarding status of workmen as employees of ONGC or of contractor, and it having found that workmen were employees of ONGC, they would ipso facto be entitled to benefits available in that capacity.Issue of regularization would therefore pale in insignificance. The Industrial Tribunal and Division Bench of the High Court were justified in lifting the veil in order to determine nature of employment."

The Director SAIL India vs. Ispat Khadandan Mazdoor Union ,(Civil Appeal no- 8081-8082 of 2011) reported in AIR 2019 SC 3601. Para 33,35,39,41,44,46,48,49 have been specifically referred to by learned counsel as follows:-

"Before we may advert to examine the question in the instantappeals any further, it will be apposite to take note of the legaleffect of the prohibition notification issued by the appropriate Government in exercise of power under Section 10(1) of CLRAAct and itsexposition by the Constituti on Bench of this Court inSteel Authority of India Ltd. and Others (supra) overruling thejudgment in Air India Statutory Corporation and Others (supra).

The legal consequence of Section 10(1) of the CLRA Act,has been noticed in paragraph 68, 88, 105 and 125 as follows:

24"68.We have extracted above Section 10 of the CLRAAct which empowers the appropriate Government toprohibit employment of contract labor in any process, operation or other work in any establishment, laysdown the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under subsection (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor, is neitherspelt out in Section 10 nor indicated anywhere in the Act.

In our view, the following consequences follow onissuing a notification under Section 10(1) of the CLRA Act:

(1) contract labor working in the establishment concerned at the time of issue of notification will cease to function;

(2) the contract of principal employer with thecontractor in regard to the contract labor comes to an end;

(3) no contract labor can be employed by the principal employer in any process,operation or other work in the establishmentto which the notification relates at any time thereafter;

(4) the contract labor is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labor;

(5) the contractor can utilise the services of the contract labor in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;

(6) if a contractor intends to retrench his contract labor, he can do so only in conformity with the provisions of the ID Act. The point now under consideration is: whether automatic absorption of contract labor working in anestablishment, is implied in Section 10 of the

CLRA Act and follows as a consequence on issuance of the prohibition notification thereunder. We shall revert to t his aspect shortly.

7. If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labor system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that Parliament intended to create a bar on engaging contract labor in the establishment covered by the prohibition notification,by a principal employer so as to leave no option withhim except to employ the workers as regular employeesdirectly. Section 10 is intended to work as a permanentsolution to the problem rather than to provide a onetime measure by departmentalizing the existing contract labor who may, by a fortuitous circumstance be in a given establishment for a very short time as onthe date of the prohibition notification. It could as well be that a contractor and his contract labor who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labor engaged on the relevant date over the contract labor employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labor in the CLRAAct.105.The principle that a beneficial legislation needs tobe construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for thatprovided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labor and 26 authorizes in Section 10(1) prohibition of contract labor system by the appropriate Government on consideration of factors enumerated in sub¬section (2) of Section 10 of the Act among other relevant factors.But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labor on issuing notification under sub-section (1) ofSection 10. Admittedly, when the concept of automatic absorption of contract labor as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25of the CLRA Act, it is not for the High Courts or thisCourt to read in some nspecified remedy in Section10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labor in the establishment of principal employer or a lesser or a harsher punishment. Such aninterpretation of the provisions of the statute will be farbeyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult toaccept that Parliament intended absorption of contract labor on issue of abolition notification under Section 10(1) of the CLRA Act.

125. The upshot of the above discussion is outlined thus:

(1)(a) Before 28¬1¬1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port , mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which 27 the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition ofthat expression, the answer to the question referred toabove, has to be found in clause (a) of Section 2 of theIndustrial Disputes Act; if (i) the Central Government company/ undertaking concerned or any undertakingconcerned is included therein eo nomine, or (ii) any industry is carried on:

1. (a) by or under the authority of the Central Government, or

(b) by a railway company;or

(c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRAAct prohibiting employment of contract labor in anyprocess, operation or other work in any establishmenthas to be issued by the appropriate Government: (1) after consulting with the Central AdvisoryBoard or the State Advisory Board, as the case may be, and

(2) having regard to(i) conditions of work and benefits provided for the contract labor inthe establishment in question, and(ii) other relevant factors including those mentioned in sub¬section (2) of Section 10;

(b) Inasmuch as the impugned notification issued bythe Central Government on 9¬12-1976 does not satisfy he aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on thebasis of this judgment nnoorder passed or no actiontaken giving effect to the said notification on or before28the date of this judgment, shall be called in question inany tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any otherprovision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labor, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labor working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare thatany direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labor following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on thebasis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labor or otherwise, in an industrial dispute brought before it by any contract labor in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contractlabor for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as todeprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labor will have tobe treated as employees of the principal employer who shall be directed to regularise the services of the contract labor in the establishment concerned subject to the conditions as may be specified by it for thatpurpose in the light of para 6 hereunder.

29 (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labor in any process, operation or other work of any establishment and where in such process, operation or other work ofthe establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labor, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

33. The exposition of the judgment of the Constitution Bench ofthis Court made it clear that neither Section 10 nor any otherprovision in the CLRA Act provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under Section 10(1) of CLRAAct.Consequently, the principal employer is not required or is underlegal obligation by operation of law to absorb the contract laborworking in the establishment. 34. This court in Steel Authority of India Ltd. and Others (supra) further held that on a issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor in any process, operation or other work, if any

30. industrial dispute is raised by any contract labor in regard to condition of service, it is for the industrial adjudicator to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labor for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the

workers of statutory benefits. Ifthe contract is found to be sham, nominal or camouflage, then the so called labor will have to be treated as direct employee of the principal employer and the industrial adjudicators should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case.

35. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respect of the establishment, theprincipal employer intending to employ regular workmen for theprocess, operation or other work of the establishment in regard towhich the prohibition notification has been issued, it shall givepreference to the erstwhile contract labor if otherwise foundsuitable, if necessary by giving relaxation of age as it appears tobe in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947.

34. It may be noted that the learned counsel for the respondent has placed reliance on the judgments of this Court in:-

Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another ; Hussainbhai, Calicut Vs. Alath Factory Thezhilali Union, Kozhikode and Others ; Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena and Others and these cases have been considered by the Constitution Bench of this Court in SteelAuthority of India Ltd. and Others(supra) of which a detailed reference has been made by us.

35. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labor agreement is sham, nominal or a t1974(3) SCC 498 5 1978(4) SCC 257 6 1999(6) SCC 439 32 mere camouflage has been examined by this Court in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another by the two¬ judge Bench of this Court. The relevant paras are as under:¬

"38. The tests that are applied to find out whether a person is an employeeor an independent contractormay not automatically apply in finding out whether thecontract labor agreement is a sham, nominal and is amere camouflage .

For example, if the contract is forsupply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment iswith the contractor, and the` ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directsthe work to be done by a contract labor, when such labor is assigned/allotted /sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subjectto what conditions. Only when thecontractor assigns/sends the worker to wok under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

40. These are the broad tests which have been laid down by this Court in examining the nature and control of the employer and 2009 (13) SCC 374 33whether the agreement pursuant to which contract labor has been engaged through contractor can be said to be sham, nominal and camouflage.

35. To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its non-compliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which has been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in International Airport Authority of India case(supra) where the contract was to supply of labor and necessary labor was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labor to be sham and bogus per se. Thus, in our considered view, if the scheme of the CLRA

Act and other legislative enactments which the principal establishment has to comply with under the mandate of law and taking note of the oral and documentary evidence which came onrecord, the finding which has been recorded by the CGIT underits award dated 16th September, 2009 in absence of the finding offact recorded being perverse or being of no evidence and even ifthere are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article 226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.

36. It is true that judgment in Dena Nath and Others (supra) is in reference to failure of compliance of Section 7 and 12 and not in reference to Section 10(1) of the CLRA Act but if we look into the scheme of CLRA Act which is a complete code in itself, non¬compliance or violation or breach of the provisions of the CLRA Act, it result into penal consequences as has been referredto in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act."

37. Learned counsel for Management has further referred to a decision of Supreme Court in **SLP No.33798-33799 2014, BHARAT HEAVY ELECTRICALS LTD. Vs MAHENDRA PRASAD JAKHMOLA & ORS.**

The relevant portion of the judgment referred to by learned counsel is being reproduced as follows:-

"We, now come to some of the judgments cited by Shri Sudhir Chandra and Ms. Asha Jain. In 'General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another' [2011 (1) SCC 635], it was held that the well recognised tests to find out whether contract laborers are direct employees are as follows:

"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workmen is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract laborers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor;

and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant" The expression 'control and supervision' were further explained with reference to an earlier judgment of this Court as follows:

"12. The expression "control and supervision" in the context of contract labor was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union thus: (SCC p.388, paras 38-39) "38.... if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him.

But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) but that is secondary control. The primary control is with the contractor." From this judgment, it is clear that test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor 'what to do' after the contractor assigns/ allots the employee to the principal employer. This is precisely what paragraph 12 explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workmen has been assigned to the principal employer to do a particular work.

We may hasten to add that this view of the law has been reiterated in 'Balwant Rai Saluja and Another v. Air India Limited and Others' [2014(9) SCC 407], as follows:

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(i) who appoints the workers;

(ii) who pays the salary/remuneration;

iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]." C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) However, Ms. Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL."

38. Another case **Bengal Nagpur Cotton Mills 2011 Vol.1 SCC 635 (para-10, 14, 16, 8 and 12)** referred to by learned counsel is also the relevant paragraphs of which are being reproduced as follows:-

"The expression 'control and supervision' in the context of contract labor was explained by this court in International Airport Authority of India v. International Air Cargo Workers Union [2009 (13) SCC 374] thus: "If the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

39. The case of **Himmat Singh vs ICI India (2008) 3 SCC P**referred to by learned counsel for Management the referred paragraphs of the judgment are being reproduced as follows:-

"A few observations made by the High Court which are relevant need to be noted. It was held by the High Court as follows: "The labor court has held that the petitioners were not working as helpers to the fitters; they were not paid by the company; and were engaged on contract for intermittent work i.e. they did not have regular or permanent work. The work that the petitioners do may be similar to the work of the workmen of the company, but they are not doing the work that is ordinary part of the industry. This is for reason that they- ? did not have permanent work; ? were engaged in intermittent work and ? themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Labor Contract Act and got benefit under the same." 9. Similarly, the Labor Court noted that contractor Rehman had applied to the administration for license under the State Contract Labor Act and considering the nature of the contract license has been granted to him. 10. In Steel Authority of India Ltd. v. Union of India &Ors. [2006(12) SC 233] it was inter-alia held as follows: "The workmen whether before the Labor Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 3 of 3 allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication." 11. In view of the factual position highlighted above and the ratio of the decision in Steel Authority's case (supra), the inevitable result is that the appeal is sans merit, deserves dismissal, which we direct with no order as to costs.

40. Airport **Authority of India vs. IndianAirportKamgar 2011 Vol.1 L.L.J page-II Bombay para 32,33,37** referred to by learned counsel for the Management. Wherein, award allowing reference regarding same character of engagement of contract labor was held now allowed in light of facts peculiar to the case referred.

Another case **of Post Master General vs. Tutudas(2007)5 SCC 317.**

Wherein, it has been held that illegal/improper grant of regularization to similarly situated persons does not create and entitlement to regularization on the ground of equal treatment under article 14 of constitution as equality is a positive concept and can not be invoked where any illegality has been committed or where no legal right has been established.

41. In another case **Dhampur Sugar Mills Vs Bhola Singh AIR 2005 SC page no 1790,** referred to by learned counsel for management it has been laid down that:

completion of 240 days in continuous service may not itself be ground for regularization of service particularly in case when workmen had not been appointed in accordance with rules.

42. The case of **Haldiya Employees Union Vs. Indian Oil Corporation 2005 CAB IC page 2078 SC** also referred to by learned counsel of which relevant paragraphs 15,16,17 & 20 specifically referred by the learned counsel are being reproduced as follows:-

"No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This however does not mean that the employees working in the canteen have become the employees of the management. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corporation Ltd. & Another (supra) shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corporation Ltd. case (supra) is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance of any statutory provisions/obligations are concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages etc. and also for depositing the provident fund contributions with authorities concerned. Contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned under the contract brought by employees of the contractor, third party or by Central or State Government Authorities. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employee of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering the proper service to the employees of the management."

43. From perusal of these referred decisions, following settled propositions of law emerges:-

A. The point whether the contract is sham, bogus and camouflage will arise only when the work contract which was allotted to the contractor was of non-prohibited category and also in cases where though the work contract which was allotted to the contractor was of non-prohibited category it become in prohibited category later on under the notification issued by appropriate Government under Section 10(1) of CLRA Act.

B. In reaching at a point whether the work contract was sham bogus and camouflage, the relevant facts for consideration will be as to firstly,who was to exercise the effective supervision and control,secondly,at whose site, the workmen were engaged, thirdly, who paid the wages and fourthly, who provided instruments and training and other facts like this is settled in the aforesaid judgments. It is also settled that what is the effective control and supervision from industry to industry and control and supervision is not only criteria for reaching at the

conclusion whether the work contract was sham, bogus or camouflage also what effective control and supervision is shall differ from industry to industry fact wise.

44. The workman Union has examined workman Rajman Verma, Shakoor Ali and a company employee Akhtar Javed Usmani on oath to support its case. The two workman Rajman Verma and Shakoor Ali have corroborated the case of the workman union on this issued as detailed above. In his cross-examination the workman Rajman Verma has stated that he does not know as to what is there in his affidavit as His examination in Chief. Even if his statement is discarded, their remains of record the statement of workman witness Akhtar Javed Usmani an employee of management who has stated that he has closely associated with the day to day activities and exchange of documents in the present case. He is familiar with the signatures of officers of management of SECL namely viz P.N.Mathur , General Manager, Shri G.S.Singh, Deputy C.G.M., L.V.Singh and Shri S.N.Mukherjee etc. He has proved the signature of General Manager on document which are photocopy which have been marked document A1 to A13. These documents are mainly internal communication between the management with regard to sanction of man power and regularization of the applicant workmen which could not be given a final shape by the top Management. Thus relating into the present dispute. He has further stated in his cross-examination in chief that these applicant workmen were working in the mines premises and were engaged in mining job. Their job is covered and nomenclature of job description of coal industry they have been engaged directly by Management and they have worked under strict control and supervision of the Management. Their attendance was marked by the attendance clerk of the Management and the payment also was made directly by the Management. He never saw any contractor in case of these workman. If at all there was any contractor, it was totally fake and bogus. He further stated that the said contractor did not have any license for contract nor was the Management, a Registered Establishment for engaging contractors, also that the applicant workmen worked under the directions and supervision and control of officers of Management. Work slips were issued to these workmen assigning them different works by the Officers of the Management. Their relevant register mainly form-B, attendance register, payment register was also prepared by the Management. The Management had internal communication regarding their regularization as employees of Management which was moved internally in favour of the applicant workmen which was unfortunately rejected by top Management. He also states that in similar circumstances, P.K.Rai, Shefali Sinha and M.P.Gupta have been regularized by the Management in Kapildhara Jhagrakhand and General Manager Office, Hasdeo Area respectively. He also states that when dispute was raised by the workmen before Assistant Labour Commissioner,, the Management illegally terminated the services of these applicant workman on 31-3-1993.

45. This witness Shakoor Ali has further proved various applications of different applicant workmen, praying to the Management to grant their leave which was granted by the Officers of the management which is Exhibit W-2 to Exhibit W2(d5) applications. Certain photocopy and original applications of leave have been proved as documents A-11, A-12 also. This witness has further proved attendance sheet as Exhibit W-3 and also proved twenty five engagement slips issued by the Engineers of the Management Company allotting works to different applicant workman on different dates collectively as Exhibit W-4.

46. IN his cross-examination, he has named certain Engineers who had granted leaves to different workmen on different dates as mentioned above. It is further stated that the attendance was taken by the Attendance Clerk, an employee of the Management, duty slips were signed by different Officers of management, work of sight helper, pipe helper, electric helper and fitter helper was taken from these workmen.

47. The other workman witness Akhtar javed Usmani , and Official of the Management Company has corroborated the claim of the workman Union on this issue and statement of the workman witness Shakoor Ali. He has also proved the photocopy internal communication regarding regularization of the applicant workman stating that he is acquainted with handwriting and signature of the Officers who signed these communications. He has corroborated the evidence of the workman Shakoor Ali on the point that attendance was taken by the company officer, leave of these workman was sanctioned by the management of the company and also different works on different dates to different applicant/workman were allotted by the management by issuing different duty slips. He also states that these applicant workman were paid directly by Management through colliery counter at the end of every month.

4 8. On the other hand , there is an affidavit of the Management witness G.Shyamla Rao, Senior Manager Personnel corroborating the case of the Management on this issue as detailed earlier in his cross-examination. He has stated that the directions are awarded by civil department whereas he is in personnel department who does not look after the workman of contracts. His this statement shows that the does not have any information regarding the facts pleaded by the management in this case , as he is not concerned with civil department which controls these works in which the applicant workman are said to have been engaged.

49. From the analysis of evidence as referred to above, it can be said that the workman Union has successfully proved that **Firstly**, the workmen worked under the direct control and supervision of Management because the work to them was allotted by the Officers of the Management and the workmen worked under their directions. **Secondly**, the Officers of the Management used to grant leave and mark attendance of workman on duty. All these facts establish that the workmen were under the direct control of the management and supervision of the management of SECL. They also worked at the sites owned by the management. Also that the instruments were approved by the

Management. Though Management has stated they in fact the workmen were paid by the contractor. The burden to prove this fact and the fact that the workman were engaged by the contractor is on Management as held in the case of **Caparo Ltd(Supra)** referred to above. The Management has not produced any document or oral evidence in this respect, whereas on the other hand, it is on oath that the wages of the workman were paid by the management.

50. An another argument of learned counsel for the workman union is that the work was of permanent and perennial nature for which engagement of the contract labour is prohibited. He has referred to Section 11.5.1 and 11.5.4 in this respect Exhibit W-1 referred to above.

Section 5 of the Contract Labour (Regulation & Abolition) Act,1970 is being reproduced as follows:-

> **5. Power to constitute committees.-(1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit. (2) The committee constituted under sub-section(1) shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. (3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed: Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.**

51. It is undisputed that the workman worked from 1982 to 1983 , hence it is established that the work was of permanent and perineal nature and was prohibited in Rule 11.5.1 & 11.5.4 of I.I.No.35 prevalent at the relevant time issued under National Coal Wage Agreement IV/V.

52. Section 23 of Indian Contract Act 1872 enumerates the following agreements as void, it is being reproduced as follows:-

> **23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless— it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.**

53. Since the work for which the applicant workman were engaged was found to be of permanent and perennial nature which is prohibited to be taken by contract labours, any agreement between management and contractor for supply of these applicant workmen for the works they were engaged is nothing but void and has no force of law because it is forbidden by law.

54. Hence on the basis of the above discussion, the fact that any lawful agreement between contractor and Management existed for engaging these applicant workman and that the applicant workman were in fact were employees of the contractor as pleaded by Management, is held not proved. The case of the applicant workman that any agreement between the management and any contractor, engaging the applicant workman is nothing but a void agreement and is a sham transaction, just a camouflage to deny the rights of the applicant workman regarding wages and other service benefits. Schedule 5 of Industrial Disputes Act,1947 proves the list of works of Management which are unfair labour practice which as follows:-

[FIFTH SCHEDULE

(SEE SECTION 2(RA)] UNFAIR LABOUR PRACTICES

I. —ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say— (a) threatening workmen with discharge or dismissal, if they join a trade union; 1 Subs. by Act 36 of 1964, sec. 23 for "not due to forced matters" (w.e.f. 19.12.1964). 2 Ins. by Act 46 of 1982, sec. 23 (w.e.f. 21-8-1984). Schedule The Industrial Disputes Act, 1947 47 (b) threatening a lock-out or closure, if a trade union is organised; (c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union organisation. 2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say— (a) an employer taking an active interest in organising a trade union of his workmen; and (b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union. 3. To establish employer sponsored trade unions of workmen. 4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say— (a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union; (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act); (c) changing seniority rating of workmen because of trade union

activities; (d) refusing to promote workmen to higher posts on account of their trade union activities; (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union; (f) discharging office-bearers or active members of the trade union on account of their trade union activities. 5. To discharge or dismiss workmen— (a) by way of victimisation; (b) not in good faith, but in the colourable exercise of the employer"s rights; (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence; (d) for patently false reasons; (e) on untrue or trumped up allegations of absence without leave; (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste; (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment. 6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike. 7. To transfer a workman mala fide from one place to another, under the guise of following management policy. 8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work. 9. To show favouritism or partiality to one set of workers regardless of merit. 48 The Industrial Disputes Act, 1947 Schedule 10.To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen. 11.To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute. 12. To recruit workmen during a strike which is not an illegal strike. 13. Failure to implement award, settlement or agreement. 14. To indulge in acts of force or violence. 15. To refuse to bargain collectively, in good faith with the recognised trade unions. 16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II.—.....

55. Section 25T of the Industrial Disputes Act,1947 prohibits unfair labour practice which reads as follows:-

UNFAIR LABOUR PRACTICES

25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

56. ON the basis of the above discussion and finding, the management is held guilty of adopting unfair labour practice in the case in hand with respect to the applicant workmen with the purpose to defeat their legitimate claims. **Accordingly, the demand of the workman union for regularization of the applicant workman is held legal and justified. Issue No.1 is answered accordingly**.

57. **ISSUE NO.2:-**

Learned Counsel for Management has submitted that even if the demand of the Applicant workmen for regularization of their services be held justified, interest of justice will be served in reinstating these applicant workmen for which they have been engaged is now being done by machines and the posts do not exists at preset. Secondly all these applicant workmen, since they were first engaged in 1982 as claimed by them, would have attained the age of superannuation which is 60 years or close to attaining it. Thirdly, even if they were regular employees of Management and had completed 10 years of continuous engagement, they could have retrenched by Management after paying retrenchment compensation and other related benefits. Learned Counsel has referred to judgment of Hon'ble the Apex Court in **Ashok Kumar Sharma Vs. Oberoi Flight Services**, AIR(2010) SC 502 and **Haryana Urban Development Authority Vs. Om Pal**(2007) 5 ASCC742 as well as **Dhampur Sugar Mills Ltd. Vs.Bhola Singh** AIR(2005) SCC 1790 also **Assistant Engineer Rajasthan Development Corporation ad another Vs. Gitam Singh**(2013)5 SCC 136.

58. It is the case of the workman that they were terminated when their dispute was pending before Assistant Labour Commissioner. Also, that they worked for 240 days or more in continuous service of management in every year and that no notice or compensation was given to them on their recruitment. All these facts have been proved from the evidence, as discussed above.

59. Since it has been held that the applicant workman are in fact the employees of management of SECL for all practical purposes, hence they are entitled to claim reliefs admissible in law from the Management of SECL. Since no notice or compensation was given to these workman on termination for their services, their termination is nothing but in violation of Section 25F of the Industrial Disputes Act,1947. Now the question arises, as to what relief they are entitled for?

60. Though all the applicant workmen have been denied their regularization and has been held not justified in law, the point here remains is - will their regularization at present, when almost all the workmen then would have attained the age of superannuation or some of them might be very close to it. In my considered view on this point,

the applicant workmen are entitled to equal pay and wages and other benefits paid to other employees discharging the similar duties for the period they were engaged. They are also held entitled to retrenchment compensation i.e. one month salary. Since they were retrenched in the year 1993, they would have availed interest from 1993 till date on this amount for which they were entitled for. Hence in the given facts and circumstances of the case in hand, interest of justice will be served fully if these applicant workman are given lump sum compensation in lieu of their claims which is quantified at Rs.3,00,000(three lakh only). **Hence, each applicant workman are held entitled to a lump sum compensation of Rs.3,00,000/- in lieu of their claims. The workman Union which has pursued their case since 1996 till date is also held entitled for cost of litigation quantified at Rs.Fifty thousand (Rs.50,000/-) only. They are further entitled to get that amount from the Management of SECL within 30 days from the date of publication of Award in Official Gazette , failing which this amount will attract interest @ 6% per annum from the date of publication of Award till the payment.**

On the basis of the above discussion, following award is passed:-

A. The demand of Samyukta Khadan Mazdoor Sangh(AITUC) of regularisation of Sh. Sakur , Shri Lal Rai, Shri Ram Prasad, Shri Ghanshyam Pandey and Sh. Rajmani Verma,. Contract workers engaged in Jhangrakhand Colliery is held to be legal and justified.

B. Each of the applicant/workmen are held entitled to a lump sum compensation of Rs.3,00,000/- (rupees Three Lakh only) in lieu of their claims.

C. The workman Union is also held entitled for cost of litigation quantified at Rs. fifty thousand (Rs.50,000/-) only. They are further held entitled to get that amount from the Management of SECL within 30 days from the date of publication of Award in Official Gazette, failing which this amount will attract interest @ 6% per annum from the date of publication of Award till the payment.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2022

का.आ. 917.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कम्बाटा एविएशन प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह-श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 50/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.09.2022 को प्राप्त हुआ था।

[सं. एल-20013/01/2022-आई. आर. (सी एम-I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th September, 2022

S.O. 917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2015) of the Central Government Industrial Tribunal-cum-Labour Court N0.2, New Delhi as shown in the Annexure, in the industrial dispute between the Management of Cambata Aviation Pvt.Ltd. and their workmen, received by the Central Government on *22/09/2022*

[No. L-20013/01/2022 – IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 50/2015
Date of Passing Award- 24.08.2022

Between:

Shri Rahul Batra,
S/o Shri Kulbhusan Batra,
R/0 BG/14-C, DDA Flats

Munirka
New Delhi-110067. .... Workman

Versus

The management of
M/s. Cambata Aviation Pvt. Ltd.,
R/o 9/9A, 3rd Floor, Vasant Square Mall,
Vasant Kunj,
New Delhi-110037. .... Management

Appearances:-

None for the claimant (A/R) ...For the claimant

None for the management (A/R) ...For the Management

AWARD

This is an application filed u/s 33A of the Id Act wherein the complainant workman has alleged that he was working in the management Cambata Aviation and a member of the Cambata Aviation Karamchari Union. Being the General Secretary of the said Karamchari Union which is the majority union recognized by the management, he is a protected workman as define under the ID Act. The Cambata Aviation Karamchari Union has raised a dispute with regard to the General demand of its member and the dispute is pending before this tribunal as Id No. 169/2010. The management has full knowledge about the said proceeding which is pending. But on 08.01.2015 the management passed the order of dismissal against the claimant which is illegal having the effect of change in service condition for the industrial dispute pending between the parties and for the claimant being a protected workman. Thus, by filing this application the claimant has alleged that the management has violated the provisions of section 33(3) of the ID Act and the order of dismissal passed against him is nonest. Hence, in this claim petition he has prayed for an award to be passed in favour of the workman directing the management to reinstate him in service with all back wages and consequential benefits with continuity of service.

Copy of the claim petition being served the management Cambata Aviation filed the reply stating therein that the complainant had earlier made similar complaint just to harass the management and the said complaints are pending subjudice. The other stand taken by the management is that the complainant is not a workman within the meaning of section 2(s) of the Id Act as he was appointed as a supervisor Grade II and discharging the duties of a supervisor. While admitting about the dependency of Id No. 169/2010 the management has stated that the Cambata Aviation Karamchari Union is one of the three Registered Trade Union in the establishment of the management. Id No. 169 of 2010 was raised on behalf of the complainant against the punishment imposed on him and subsequently he withdrew the same. Hence, there is no industrial dispute pending between the management and the claimant. The management has also denied the status of the claimant as a protected workman and submitted that no order recognizing the claimant as a protected workman was ever passed. Thus, the management has prayed for dismissal of the application filed u/s 33A of the ID Act.

The claimant filed rejoinder reiterating the stand taken by him in the claim petition. alongwith the rejoinder several documents were filed.

On completion on the pleading the parties were called upon to adduce evidence. At this juncture the claimant filed an application for amendment of the claim petition. But subsequently the same was rejected as not pressed. By order dated 10.09.2018 the management was proceeded exparte and the claimant was called upon to adduce exparte argument. Several adjournments were made for argument. Instead of advancing argument the petitioner on 14.01.2019 filed an application under Order 6 Rule17 of the CPC praying amendment in the claim petition. The application was allowed and the claimant workman was directed to file the amended claim. Again several adjournments were made till 22.09.2019 for filing of amended claim petition but the same was not filed. On 23.09.2019 the claimant was called upon to adduce evidence to substantiate the complaint made. Inspite of several opportunities since the claimant didn't file the evidence his right was closed and this award is being passed. For no evidence adduced by the claimant it is held that the complaint petition filed by the claimant stands unproved. Hence, ordered.

ORDER

The complaint petition be and the same is dismissed as without merit and this award is accordingly passed. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2022

का.आ. 918.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल एविएशन कंपनी ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 138/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.09.2022 को प्राप्त हुआ था।

[सं. एल-11012/25/2011-आई. आर. (सी एम-I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th September, 2022

S.O. 918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 138/2012) of the Central Government Industrial Tribunal-cum-Labour Court N0. 2, New Delhi as shown in the Annexure, in the industrial dispute between the Management of National Aviation Company of India Ltd. and their workmen, received by the Central Government on *29/09/2022.*

[No. L-11012/25/2011 – IR (CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 138/2012

Date of Passing Award- 16.08.2022

Between:

Shri G. K Mirdha,
R/o RZ-291, Block-M,
Near DDA, Park, Raj Nagar-II,
Palam Colony, New Delhi- 110045. .... Workman

Versus

The General Manager,
National Aviation Company of India Ltd.,
IGI Airport, Northern Region,
New Delhi-110037. ...Management

Appearances:-

Shri Abhishek Kumar (A/R) ...For the claimant

Shri Gautam Dutta (A/R) ...For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of National Aviation Company of India Ltd., and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-11012/25/2011 (IR(CM-I) dated 06/09/2012 to this tribunal for adjudication to the following effect.

"Whether the action of the management of National Aviation Company of India Ltd. (NACIL) Air India, Northern Region, IGI Airport New Delhi in terminating the services of Shri G.K Mirdha, Ex-helper (Ground Support) staff No. 701131 w.e.f 11.07.2008 is fair and justified? To what relief is the workman concerned entitled?

This order deals with the grievance of the claimant (since dead and represented substituted by legal heirs) with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled against her.

In order to deal with the dispute and grievance of the claimant, it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant in the year 1979 had joined the service of Indian Airlines as a helper in the ground support department. His service was made permanent in the year 1980. Considering his performance, later he was promoted to the post of senior helper and head helper. When every thing was going on smoothly, for some un fore seen family

problem he remained absent from duty for a long period in the year 2000 and a result of the same his service was terminated. But for the representation made and being convinced with the explanation offered, on 03/09/2003, he was re appointed. But to his bad luck, during the period 2004 to 2007, his wife and one son suffered critical illness and son suffered from mental illness. Not only that, his mother also died during this period and he being the only able male member of the family had to look after every body including their treatment. This led to irregularity on his part in reporting for duty. However, he was informing his seniors from time to time about his problem. To add to his misfortune, in the year 2007, he met with an accident on fall from a staircase and lost his mobility. This fact was also duly intimated by him in the office with a request for grant of leave. But the authorities decided to initiate an inquiry against him and on 19/09/2007, a charge sheet was served on him alleging un authorized absence from duty for a period of 383 days during the period 16/03/2006 to 31/08/2007. His reply to the charge sheet was not accepted and departmental inquiry proceeded. Though he participated in the inquiry, did not contest the same and admitted the alleged unauthorized absence since he was advised to do so with a false assurance that on admission of guilt he will be excused. Being an illiterate person, he believed the same and did not contest the inquiry properly. At the end of the inquiry, the inquiry officer found the charge established against him and recommended for the punishment i.e termination of service. The same was accepted by the disciplinary authority and his service stood terminated with effect from 11/07/2008. He then served a demand notice on the management and raised the Industrial dispute challenging the order of Termination of service as illegal, disproportionate and harsh. The fairness of the inquiry conducted has also been challenged.

The management refuted the stand taken by the claimant and by filing written statement in which it has been pleaded that the claimant was a habitual absentee from duty and in the past i.e before his termination between 1987 to 1998 he was proceeded with disciplinary action on eight separate occasions and for each inquiry, punishment was imposed on him.but for the period under inquiry he was found absent from duty for 383 days and for such indisciplined attitude he was rightly given the punishment.

On these rival pleadings, issues were framed by order dated 15/05/2013 and issue no. 1 was taken up for adjudication as a preliminary issue to ad judge if fairness was adopted during the inquiry and if principles of natural justice were followed. After recording evidence adduced by both the parties, by order dated 22/03/2022, this Tribunal came to hold that the inquiry was conducted fairly and due opportunity was allowed to the claimant to participate and set up his defence. The said issue was decided in favour of the management and the both parties were called upon to advance argument on the proportionality of the punishment.

Whereas the learned AR for the Management supported the order imposing punishment as proper and cited his past in disciplinedbehavior as a strong ground for imposing the punishment of termination, the claimant has described the same as extremely harsh. On behalf of the claimant it was also argued that the mitigating circumstances leading to his absence was not considered at all during the inquiry. It was also pointed out that the claimant had suffered an accident causing loss of mobility and the same though intimated to the superior authorities was not considered during inquiry. But while deciding the preliminary issue it has already been considered and held that the claimant could not substantiate the stand that for his accident he was forced to remain absent from duty.

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. Be it stated here that in several judicial pronouncements the scope of adjudication u/s 11 A of the ID Act has been defined to say that the Industrial adjudicator can not act as the appellate authority to weigh and asses the evidence recorder during the domestic inquiry. But it can interfere with the punishment awarded in appropriate cases.

In the case of **Muriadih Colliery VS Bihar Coalliery Kamgar Union (2005) 3 SCC331,** the Hon'ble SC have held:-

"it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Whether a misconduct is severe or otherwise depends on the facts of each particular case. In a case where the charge is about misappropriation of public money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination.

In the case of **Regional Manager U.P.S R TC, Etawah & others Vs. Hotilal and another, 2003(3) SCC 605, referred in the later case of UPSRTC VS. Nanhelal Kushwaha (2009) 8 SCC, 772,** the Hon'ble Apex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded."

But as stated in the preceeding paragraph the allegation against the claimant was of habitual unauthorized absence from duty. The claimant had admitted the same during the inquiry. The evidence on record also shows that in the past in eight separate proceedings he was found guilty and awarded with punishment. As per the admission of the

claimant on one occasion he was dismissed from service and the management on a sympathetic consideration had re employed him. That show of sympathy did not change the attitude of the claimant and during the period 2006 to 2007 he remained absent for 383 days. The explanation offered was not found acceptable. The claimant has taken a further plea that on assurance of excuse, he admitted his guilt is again found un worthy of acceptance.

The learned AR for the management while placing reliance in the judgment of the Hon'ble SC in the case of **M/S Firestone Tyre and Rubber Co of India vs. The Management And Others** argued that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act by placing reliance in the case of **ML Singla vs. Punjab National Bank, AIR 2018 SC 4668,** submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment comensurates the charge.

In this case the evidence adduced before this Tribunal reveals that the alleged occurrence is the not lone incident for which he was proceeded to. During the inquiry the claimant had admitted his guilt and could not prove the defence plea taken. In such a situation the imposition of punishment appears to be proportionate to the charge i.e habitual unauthorized absence.

Thus on considering the evidence recorded during the domestic inquiry and adduced before this Tribunal, the one only conclusion is that the punishment imposed on the claimant for the un authorized absence, amounting to misconduct is proportionate and cannot be termed as harsh. Hence it is not felt proper to interfere and modify the same to a lesser punishment in exercise of the power conferred u/s 11A of the ID Act. Hence, ordered.

ORDER

The reference be and the same is answered in against the claimant. For the finding rendered in the preceding paragraphs it is held that imposition of the punishment commensurates the charge. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

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